



CITY OF MORGAN HILL
COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
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PLANNING COMMISSION

TUESDAY, DECEMBER 9, 2008

CITY COUNCIL CHAMBERS
CIVIC CENTER
17555 PEAK AVENUE
MORGAN HILL, CA

COMMISSIONERS

CHAIR SUSAN KOEPP-BAKER
COMMISSIONER H. GENO ACEVEDO
COMMISSIONER ROBERT L. ESCOBAR
COMMISSIONER RALPH LYLE
COMMISSIONER JOSEPH H. MUELLER
COMMISSIONER WAYNE TANDA
VACANT

WORKSHOP - 5:00 P.M.

REGULAR MEETING - 7:00 P.M.

***** A G E N D A *****

NOTICE TO THE PUBLIC

The following policies shall govern the conduct of the Planning Commission meetings:

- *All Planning Commission proceedings are tape-recorded.*
- *Individuals wishing to address the Planning Commission on a particular item should fill out a speaker card and present it to the Secretary. This will assist the Chairperson in hearing your comments at the appropriate time.*
- *When the Chairperson invites you to address the Commission, please state your name and address at the beginning of your remarks.*
- *Speakers will be recognized to offer presentations in the following order:*
 - *Those supporting the application*
 - *Those opposing the application*
 - *Those with general concerns or comments*
 - *Presentations are limited to 5 minutes*

WORKSHOP - 5:00 P.M.

1. Evaluation of Residential Development Control System (Measure C) projects in the Fiscal Year 2008-2009 Small Project, Multi-Family Rental and Open Market Project competitions. Building allocation for Fiscal Year 2010-2011.

Recommendation: Discuss global scoring issues and procedures for conducting the public hearings.

REGULAR MEETING - 7:00 P.M.

**DECLARATION OF POSTING OF AGENDA IN ACCORDANCE WITH
GOVERNMENT CODE SECTION 54954.2 - SECRETARY REPORT**

OPEN PUBLIC COMMENT PERIOD (5 MINUTES)

Now is the time for presentation from the public on items **NOT** appearing on the agenda that are within the Planning Commission's jurisdiction. Should your comments require Commission action, your request will be placed on the next appropriate agenda. No Commission discussion or action may be taken until your item appears on a future agenda. You may contact the Planning Division for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your comments to five (5) minutes.

MINUTES: November 11, 2008

PUBLIC HEARINGS:

- 1) **ZONING AMENDMENT, ZA-06-11/SUBDIVISION, SD-06-07/DEVELOPMENT AGREEMENT, DA-06-04/DEVELOPMENT SCHEDULE, DS-08-05: DIANA-CHAN:** A request for approval of a precise development plan, subdivision, development agreement and development schedule for a 117 unit single family detached development located on a 42 acre site on the south side of Diana Ave. between Murphy Ave. and Ringel Dr. (APNs 728-18-012, 728-19-001, 002, 003 and 728-20-037 & 038)

Recommendation:

- 1) Open Public Hearing;
- 2) Adopt Mitigated Negative Declaration;
- 3) Adopt Mitigation Monitoring & Reporting Program;
- 4) Adopt Resolution for the zoning amendment with recommendation to forward request to the City Council for approval;
- 5) Adopt Resolution approving the subdivision request;
- 6) Adopt Resolution for the development agreement with recommendation to forward request to the City Council for approval; and
- 7) Adopt Resolution approving the project development schedule.

APPLICANTS FOR THE FOLLOWING PROPOSED RESIDENTIAL DEVELOPMENTS HAVE REQUESTED A BUILDING ALLOTMENT UNDER THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM, PURSUANT TO CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE:

MULTI-FAMILY RENTAL COMPETITION:

- 2) **MEASURE C, MC-08-18: MONTEREY-MONTEREY DYNASTY:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project at build out will consist of 99 condominium/rental units and 29 single-family attached dwellings on 7.5 acres located at 15725 Monterey Rd. (APN 767-23-026 & 029)

SMALL PROJECT COMPETITION:

- 3) **MEASURE C, MC-08-13: CLAYTON-O'BRIEN:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-2011. The project at buildout will consist of six single-family dwellings and one custom home lot on 3.59 acres located on Clayton Ave. north of Peebles Ave. (APN 726-40-011 & 012 and APN 726-41-061)
- 4) **MEASURE C, MC-08-15: W. EDMUNDSON-AMBER HILL:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project is a 15 unit single-family residential development on a 2.3-acre parcel located on the west side of Piazza Way south of W. Edmundson Ave. (APN 767-21-045)
- 5) **MEASURE C, MC-08-24: W. DUNNE-SOUTH VALLEY DEVELOPERS:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project is a 14 unit single-family residential development on a 1.6-acre site located on the south side of W. Dunne Ave. and a northerly extension of Lone Hill Dr. The Lone Hill extension will serve six single-family residences on a cul-de-sac street. (APN 767-12-056, 058 & 059)

OPEN MARKET PROJECT COMPETITION:

- 6) **MEASURE C, MC-08-16: PEET-BORELLO:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project at buildout will consist of 245 single-family dwellings on 120 acres extending from Cochrane Rd. to Peet Rd., on the westerly side of Coyote Rd. (APN 728-34-009)
- 7) **MEASURE C, MC-08-17: E. CENTRAL-SHENG:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project is a 32-unit single and multi-family residential development on 4.3 acres located on the south side of E. Central Ave. and west side of Calle Mazatan, north of Calle Verde. (APN 726-22-056)
- 8) **MEASURE C, MC-08-19: BUTTERFIELD-MONTEREY DYNASTY:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project is a 24-unit single-family residential development on 3.52-acre site located easterly of Butterfield Blvd. west of San Ramon Dr. (APN 817-57-018)

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- 9) **MEASURE C, MC-08-20: W. EDMUNDSON-PANCAL:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project is a 38-unit single-family and townhouse development on 7.9 acres located on the south side of W. Edmundson Ave., opposite Olympic Dr. (APN 767-21-014 & 015)
- 10) **MEASURE C, MC-08-22: MURPHY-PANCAL:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project at buildout will be a 68-unit single-family residential development on 7.1 acres located between Murphy Ave. and Condit Rd., north of E. Dunne Ave. (APN 728-17-018 & 022)
- 11) **MEASURE C, MC-08-23: E. DUNNE-SOUTH VALLEY DEVELOPERS:** A request for a Residential Development Control System building allocation for Fiscal Year 2010-11. The project is a 43-unit condominium and 7-unit single-family residential development on 3.5 acres located at the southeast corner of E. Dunne Ave. and Church St. (APN 817-11-056 & 057)

Recommendation: Open/Close public hearing following receipt of public testimony for each application and direct City Staff on those categories in each project evaluation that should be given further review.

12) **SELECTION OF VICE-CHAIR:**

Recommendation: Select Vice-Chair in accordance with City Council adopted policy.

THE DECEMBER 23, 2008 MEETING HAS BEEN CANCELED

TENTATIVE AGENDA FOR THE JANUARY 13, 2009 MEETING:

- UP-08-11: Barrett-Colson & Colson
- DAA-06-02C: San Pedro-Alcini/Pinn Bros.
- DAA-07-01A (SD-07-08/MC-05-05): Monterey-Alcini/Pinn Bros.
- ZA-08-06: Condit-Kubo
- ZAA-98-16B: Condit-Horizon Land/Ford Store
- ZA-08-19: Condit-Wolff
- ZA-08-20: Condit-Wolff (sign code)
- UP-08-12: Condit-Wolff
- Redistribution of RDCS Building Allotments
- Review and approval of Final RDCS project scores

ANNOUNCEMENTS:

CITY COUNCIL REPORTS

ADJOURNMENT

SPEAKER CARD

IN ACCORDANCE WITH GOVERNMENT CODE 54953.3, IT IS NOT A REQUIREMENT TO FILL OUT A SPEAKER CARD IN ORDER TO SPEAK TO THE PLANNING COMMISSION. HOWEVER, it is very helpful to the Commission if you would fill out the Speaker Card that is available on the counter in the Council Chambers. Please fill out the card and return it to the Deputy City Clerk. As your name is called by the Chairperson, please walk to the podium and speak directly into the microphone. Clearly state your name and address and proceed to comment upon the agenda item. Please limit your remarks to three (3) minutes.

NOTICE

AMERICANS WITH DISABILITY ACT (ADA)

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City.

If assistance is needed regarding any item appearing on the Planning Commission agenda, please contact the Office of the City Clerk at City Hall, 17555 Peak Avenue or call 779-7259 or Hearing Impaired only - TDD 776-7381 to request accommodation.

NOTICE

NOTICE IS GIVEN pursuant to Government Code Section 65009, that any challenge of any of the above agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to the Public Hearing on these matters.

NOTICE

The time within which judicial review must be sought of the action taken by the Planning Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

NOTICE

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act that are distributed to a majority of the Planning Commission less than 72 hours prior to an open session, will be made available for public inspection at the Office of the City Clerk at Morgan Hill City Hall located at 17555 Peak Avenue, Morgan Hill, CA, 95037 at the same time that the public records are distributed or made available to the Planning Commission. (Pursuant to Government Code 54957.5)

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COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

NOVEMBER 11, 2008

PRESENT: Acevedo, Koepp-Baker, Davenport, Escobar, Lyle, Mueller, Tanda

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Linder,
Contract Planner (CP) Bischoff, Senior Civil Engineer (SCE)
Creer, and Minutes Clerk Johnson.

Chair Koepp-Baker called the meeting to order at 7:00 p.m., inviting all present to join ask she led the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Koepp-Baker opened the floor to public comment for matters not appearing on the agenda.

Commissioner Davenport read a letter addressed to Mayor Tate regarding his resignation from the Planning Commission November 12 due to his appointment to the Gailvan College Board of Trustees. Commissioner Davenport noted several accomplishments of the Commission during his term of office, and said he was proud of having worked with the 'great Commissioners and outstanding staff'.

The other Commissioners offered heartfelt congratulations, and said he had been 'excellent to work with, having presented solid ideas, and thoughtful comments'.

Noting that no others in attendance expressed a wish to address items not appearing on the agenda, the public hearing was closed.

CONSENT CALENDAR:

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MINUTES:

OCTOBER 28,
2008

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE
THE OCTOBER 28, 2008 MINUTES WITH THE FOLLOWING REVISIONS:

Page 4, paragraph 1(delete/correct): ... between now and April 30 of next year, there would be no BMRs. However, the City Council said 5% low income BMRs. *June 30 of 2010, there would be a 5% low-income BMR requirement. However, the City Council said that there would be no BMR requirement through April 30 of 2009, and then a 5% low-income BMR requirement from then until June 30, 2010.*

Page 6, correct number sequence: 2) 3) 3) 4)

Page 6, 3) 1st paragraph: ensure BMR requirements are ~~being met~~. *can be met. Staff needs to ensure that when previously planned BMR lots are converted to market rate lots that there are sufficient BMR-sized lots remaining in the project to satisfy the BMR requirements for the remainder of the project."*

Page 7, paragraph 4: ..lengthened *increased significantly*

Page 12, paragraph 4: ... that even though *though*

THE MOTION PASSED (6-0-1-0) WITH THE FOLLOWING VOTE: AYES:
ACEVEDO, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES:
NONE; ABSTAIN: KOEPP-BAKER; ABSENT: NONE.

Disclosure: Commissioners Lyle and Mueller informed that they had (individually) visited the sites of items 1 and 2 on the agenda.

PUBLIC
HEARINGS:

1) ANX-08-06/
ZA-08-14: W.
MAIN-ACTON

CP Bischoff presented the staff report indicating the City proposes several actions, which involve two parcels located at 905 W. Main Ave. One of the two parcels (APN 773-06-008), is 20 acres in size and located outside the city limits. The other parcel (APN 773-06-009) is 4.5 acres in size and is located in the city limits. The actions proposed include: 1) pre-zoning to *Open Space* the unincorporated parcel (APN 773-06-008) consistent with its *Open Space* General Plan land use designation; 2) annexation of the unincorporated parcel into the City of Morgan Hill; 3) a lot line adjustment that would reduce APN 773-06-008 to approximately 18 acres in size and increase APN 773-06-009 to approximately 6.5 acres in size; and 4) acquisition of the resultant 18-acre parcel by the City of Morgan Hill. He further indicated that the first two of these actions are on the agenda this evening. The third and fourth actions would occur subsequent to LAFCO approval of the annexation.

CP Bischoff explained that currently the General Plan calls for open space preservation of El Toro above the 500-foot contour with the property proposed for annexation being above that contour. He also noted that in the City's Greenbelt Study, El Toro had received the highest priority for preservation. The purpose of acquisition of the parcel is to preserve its open space qualities.

CP Bischoff went on to explain that the purpose of the future lot line adjustment is to

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allow the possibility of subdivision of the 4.5-acre parcel (that would be increased to 6.5 acres in size) into a 5-acre parcel zoned Open Space and a 1.5-acre parcel zoned R-1 12,000. The R-1 12,000 parcel would then have the potential for further subdivision into three lots. CP Bischoff went on to say that, the owners have no plans for subdivision at this time, but would like that potential in the future. If future subdivision were to be proposed, additional environmental analysis would be required.

CP Bischoff indicated that a letter had been received from LAFCO requesting changes and additional information is added to the Initial Study prepared for the applications.

Commissioner Mueller asked if the errors in the initial study were of such magnitude that the initial study would have to be redistributed. "No," CP Bischoff said, "the City can address those minor issues, and prepare a supplemental memo for the City Council when the matter is before that body for action." Commissioner Mueller noted that there was no reference to a prior Micro Measure C Application. "No," CP Bischoff said, "that application was found to be invalid by the Courts. There is no interest by the present owner to sell or subdivide the property."

Chair Koepp-Baker clarified that there was nothing at the LAFCo level to impede the requested actions.

Responding to a question from Commissioner Tanda regarding the lot line adjustment, CP Bischoff explained the configuration and shape of the property following the adjustment. He said, "Should this property ever be proposed for subdivision, only about 1 – 1.5 acres are possible for subdivision."

Commissioner Mueller referenced the slope on the southern third of the property. CP Bischoff said there was adequate area for construction of a house on slopes of about 12 percent.

Commissioner Mueller referenced past development in the City, which resulted in high slopes in back yards, which proved to be troublesome. "I think we can learn from Spring Avenue," he said.

Chair Koepp-Baker opened the public hearing.

Frank Pravettoni addressed the Commissioners, saying he was one of property owners with along with his siblings, and could answer questions. Mr. Pravettoni commented that the family would like to see a trail completed on the property some day.

Howard Lomcke, 900 W. Main Ave., identified his property as the flag lot adjacent to the subject property. "I led the fight to maintain the existing zoning line. It now seems to be a lot of work being done on this thing," he said. "Is the property where the house is located grandfathered so they can build?" CP Bischoff explained that the Open Space zoning requires a minimum lot size of five acres. The lot line adjustment would allow a 5-acre lot to be created around the existing house and the 1.5-acre R-1 12,000 zoned area to be separated into its own lot. Mr. Lomcke said a problem in the area is drainage, and additional building could intensify that problem.

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Commissioner Mueller explained that the intent is to have the five-acre parcel with the home on it separated from the R-1/12,000 zoned area. "You need to remember," Commissioner Mueller said, "the dividing line corresponds with the zone line not the 500-foot elevation."

Jim Kavitsky, 890 W. Main Ave. told the Commissioners he is one of the other property owners along the line. Mr. Kavitsky expressed 'enormous resistance to development or changes to the current line'. "If the owner has no intent to develop the property, I don't see why there is a need for changing the zoning. It is important to have this be part of the green belt for the City," he said. "The higher elevations need the protection because they are not developable since the slope is there. I think this is still controversial."

CP Bischoff explained as a 'matter of clarification' that the zoning on the 1.5 acres is not proposed for change. He stated that this would offer protection for the area, citing 'lessons learned' from County development in 'difficult areas'.

With no others present to address the matter, the public hearing was closed.

Discussion ensued regarding:

- whether the existing house has historical significance; PM Rowe explained that during the recent historical resources survey, this was not identified as significant
- requirements of the Hillside Ordinance
- potential for development on the lower eastern portion of the site; the owner again stated, "At the present time there is not intent for development."
- additional environmental work would be required if a proposal to develop was forthcoming
- any proposed public trail must have additional environmental assessment
- concern of heights of any future structure

Minor changes to the initial study were noted.

COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO APPROVE THE NEGATIVE DECLARATION. THE MOTION PASSED (7-0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF ANNEXATION APPLICATION, ANX-0A8-06: MAIN-ACTON. NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN THE RESOLUTION, COMMISSIONER ACEVEDO SECONDED THE MOTION, WHICH CARRIED (7 - 0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS, RECOMMENDING APPROVAL OF ZONING APPLICATION, ZA-08-14: MAIN-ACTON COMMISSIONER

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ACEVEDO PROVIDED THE SECOND TO THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

**2) UP-08-11:
BARRETT-
COLSON &
COLSON**

A request for approval of a conditional use permit for the construction and operation of a 138-suite congregate care retirement residence approximately 115,600-sf in size located near the northwest corner of Barrett Ave. and Butterfield Blvd. on a 5.3-acre site in a R3(PD) zoning district.

PM Rowe gave the staff report, advising this request is to construct and operate a 138-unit congregate care retirement residence, providing units for up to 138 senior citizens (with up to 150 residents total). PM Rowe reminded that in October 2008, the City Council approved a General Plan amendment and Zoning amendment for the proposed congregate care retirement residence, with an attached condition for zoning approval by the Council. R-3 zoning was approved by the City Council in October, as was the General Plan Amendment. PM Rowe continued with the overview of the request, as the matter had been advertised for public hearing at this meeting. However, PM Rowe further advised, staff for the applicant could not be present at this meeting to address the Commissioners, and consequently had sent a request to have the matter of UP-08-11: Barrett-Colson & Colson continued to the January 13, 2009 Commission meeting.

Chair Koepp-Baker open and then closed the public hearing as there were no persons present indicating a wish to speak to the matter.

COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO CONTINUE THE MATTER OF UP-08-11: BARRETT-COLSON & COLSON TO THE JANUARY 13, 2009 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WAS ABSENT.

PM Rowe said staff did receive some questions regarding the request, and will bring those to the scheduled January meeting.

**3) ZA-08-18/
SD-08-07/
DA-08-02/
DS-08-03:
DIANA-EAH**

A request for approval of a mitigated negative declaration, subdivision, development schedule and recommendation for Council approval of a zoning amendment and development agreement for an 80 unit project proposed within an 8-acre PUD bound by E. Dunne Ave., Butterfield Blvd., Diana Ave. and the railroad. The proposed project development plan would allow 40 townhouses, 40 senior apartment units, a 27,000 sq. ft. restaurant and two office buildings of approximately 19,000 sq. ft.

SP Linder presented the staff report, providing an overview of the project and the how the project met the deadlines set by the Planning Commission and City Council in granting the extension of time request in August.

SP Linder reminded that as part of the adoption of the Downtown Plan that language was added to the General Plan requiring residential development at a density of 25-40 du/acre. SP Linder describe how the proposed precise development plan met the density of the General Plan and met most of the development criteria of Ord. 1488 which defined

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the current PUD zoning designation on the subject site.

SP Linder went on to give an overview of the current plan and how it compared with the scoring (points) of the original RDCS application layout.

Speaking to the commissioners, SP Linder addressed other issues such as:

- * noise levels from the railroad and Dunne Ave.
- * driveway access and shared circulation
- * potential problem could occur in meeting future build out as a mixed-use project with a 25-40 du/ac General Plan requirement.
- * the Downtown Plan update would be an opportunity to revisit density and mixed use requirements on the site.
- * Ordinance 1488 requirements ~ change needed; front part of project compatible with Community Center ~ back portion of project seems to play off Courthouse design
- * need for discussion re timing and phasing of project: obtain building permits

Discussion ensued between Commissioners and staff regarding infiltration of outside noise into dwelling units and potential solutions, e.g., window closures, etc. It was decided that monitoring of such would be difficult if not impossible.

SCE Creer joined the discussion in response to questions regarding the potential location of the under-grounding of the railroad, as well as discussion on the placement of the high-speed rail system. It was determined that another EIR would have to be done as the high-speed rail came closer to reality.

Chair Koepp-Baker opened the public hearing.

Project manager Felix AuYeung, 21269 E Francisco Blvd.; Suite B; San Rafael, told the Commissioners that the project was 'on time and in good shape now'. "Furthermore," he said, "we feel good about the process of going forward with South Valley Developers." Mr. AuYeung spoke on the two phases (sections) of the project, as well as the RDA commitment needed to make the project financially feasible, noting that details of the financial arrangements were on going.

Mr. AuYeung spoke further to the Commissioners asking for changes to the development schedule (in relation to RDA needs and requirements) timeline by asking for a change to April 10 (instead of February 30, 2010) for obtaining building permits and moving building permit submittal to November 15, 2009 (~~August 15, 2009~~).

Commissioner Lyle led discussion of one of the changes suggested by SP Linder: senior portion of the project being started first and asked Mr. AuYeung if that would that is problem? [difficult to predict based on funding available and potential for sales] Commissioner Lyle explained the need for getting the 'affordable aspect' of senior housing on-line and recounting the difficulties in the past when a developer failed to honor commitments to ensure BMRs were completed.

Mr. AuYeung said his organization 'exclusively does affordable housing and will do the BMRs as soon as financing is available'. "We can do the schedule concurrently with the

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market rate and will do the affordable ASAP," he said. Mr. AuYeung then responded to Commissioner questions regarding:

- * change of original plan from for sale units to for rent
- * request to update - not delete - items of RDCS commitment; staff says identified items must be of equal or greater value, e.g., HVAC, water heating, etc., and will be upgrades only with an approved plan going forth to the City Council [PM Rowe advised: commitments can have amendments]

Other discussions centered on:

- targeted age groups (62 and above)
- tax agreement applicant deadline (2 rounds per year: 1 in March and 1 in June) and applicant's plan to submit applications (2nd round)
- concern of need acoustics study re: carports placement toward rail road tracks
- wish to not have a sound wall
- trash enclosure placement
- need to protect future residents through disclosures

Al Cherry, 1405 E. Main, told the Commissioners he was present to represent one of the nearby property owners, Helen Payne, who was requesting some assurance for access to the property, which will remain in her family. Mr. Cherry told of the two driveway accesses to Diana on the east and west and stated that the property owner wants to continue to have access and does not want a 'joint driveway'. Commissioner Mueller assured Mr. Cherry that the existing driveways will not be impacted by this particular project. "However, in the future under the PUD there could be more residential and an office building," he said. "The driveways could be subject to review at that time."

Mr. Cherry stressed that the street was almost developed to the center of the property and said that when this project goes in development will be to the edge of the property. "Our concern is shutting off the driveway access," he said.

SP Linder advised that as part of the project development, the applicant is responsible for improvements and the two {existing} driveways will receive improvements as well.

Scott Schilling, 16060 Caputo Dr. #160, addressed the Commissioners, saying, "We have been working on this project for many months and the design tonight is a compilation of many efforts. We will be putting in improvements and we will put in new driveway aprons. The neighbor's biggest inconvenience will be just during construction."

Mr. Schilling went on to address:

- layout of buildings: provision of buffer (interior garage doors) for sound reduction
- sanitary sewer easement
- truck access into nearby restaurant; traffic pattern explained
- aim: provide high quality living environment for residents
- from architectural standpoint, looked at courthouse and tried to pull in elements to project design is 'more green'
- will warm project with colors
- use of fewer materials

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- flat roofs will lessen building height somewhat
- will do BIG and Energy Star
- request to update commitments to meet points (will submit to staff within the week for revision)

Responding to a question from Commissioner Lyle regarding the development schedule, Mr. Schilling predicted a 2010 'start time'. He also spoke to issues of :

- sales for the units
- moderate price ranges
- sizes of units (square footage)
- exciting project for first time buyer
- project is close to downtown
- tandem garages: two spaces within garage area ~ garages to be 'deeper not wider'
- melding of the two phases through design
- retention of contemporary design but softens though use of colors, etc.
- roof design: Architect and developer will work with Planning Commission and ARB to study design

With no others present indicating a wish to speak to the matter, the public hearing was closed.

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE MITIGATED NEGATIVE DECLARATION WITH A MODIFICATION to:

G. Noise Carports nearest rail road are to be reviewed for reduction of acoustical impact from trains

Under discussion, Commissioner Lyle asked about a condition to have windows closed for noise reduction. That was not agreed due to staff's concern with the difficulty of ongoing enforcement and the units will be equipped with the proper windows to reduce noise levels consistent City requirements..

THE MOTION PASSED (7 - 0) WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS THEREIN, RECOMMENDING APPROVAL OF AN AMENDMENT TO A PLANNED UNIT DEVELOPMENT ESTABLISHED UNDER ORDINANCE 1488 TO INCORPORATE A PRECISE DEVELOPMENT PLAN AND AMENDMENTS TO THE PERMITTED USES AND DEVELOPMENT STANDARDS.

Commissioner Mueller consulted with Staff on the need to add language re: the courthouse design; SP Linder said it was addressed in the development standards.

COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

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COMMISSIONER MUELLER OFFERED A RESOLUTION, INCLUSIVE OF THE FINDINGS AND CONDITIONS THEREIN, APPROVING A TENTATIVE MAP FOR A 41-LOT SUBDIVISION ON A 2.1-ACRE SITE LOCATED ON THE SOUTH EAST CORNER OF THE INTERSECTION OF DIANA AVE. AND THE RAILROAD TRACKS. COMMISSIONER ESCOBAR PROVIDED THE SECOND TO THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Commissioner Mueller turned discussion to sequencing of units and the request for changes to the development agreement. "I think work on the two phases must be concurrent for the project to work," he said. "The concern is: if they are concurrent, literally the developer would have to pull permits at the same time and there is concern about the timeline of the federal housing program funding."

Chair Koepp-Baker responded to a request to reopen the public hearing.

Mr. Schilling advised that it is very likely that the final map for both projects will have to record concurrently, but that there could be language that the senior units must have the permits first. "In all actuality," he said, "it is likely that both projects will be going at the same time." Responding to other questions, Mr. Schilling said that the infrastructure of the onsite and off site would be completed together.

The public hearing was closed.

NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN, COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION, DA-08-02: DIANA-EAH FOR MC-05-08: DIANA-EAH, and providing the following modification:

Page 8 (Section 14 l) add: The permits for the senior project must be pulled before, or concurrently with, the market rate units. There may not be equal number of permits for the units in the PUD pulled, however, the senior units pulled must stay ahead.

COMMISSIONER ESCOBAR PROVIDED THE SECOND TO THE MOTION, WHICH PASSED (7 - 0) BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Commissioner Mueller asked Mr. Schilling, if it would be possible to begin construction in two months?

Mr. Schilling answered from the audience, "Once the map records, construction can begin." He went on to assure that the Measure C requirements for commence construction would be 'doable'.

COMMISSIONER MUELLER OFFERED A RESOLUTION APPROVING DEVELOPMENT SCHEDULE APPLICATION, DS-08-03: DIANA-EAH FOR

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BUILDING ALLOCATIONS FOR FY 2008-09 & FY 2009-2010 AWARDED TO MEASURE C APPLICATION, MC-05-08: DIANA-EAH, INCLUSIVE OF THE FINDINGS AND CONDITIONS SO IDENTIFIED, AND WITH THE FOLLOWING MODIFICATIONS:

Exhibit "A":

Obtain Building Permits (both phases) ~~02-30-2010~~ 04-30-2010

Building Permit Submittal (both phases (~~08-15-2009~~)) 11-15-2009

COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED (7 - 0) WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER, TANDA; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES: Commissioner Mueller suggested: "There is need for discussion soon regarding horizontal verses vertical mixed use and whether projects should be allowed to make 'huge changes' from what was initially submitted for scoring under the RDCS. I have real major concerns if we are meeting the intent of RDCS when the plan has changed so dramatically."

Commissioner Lyle said there might be need to establish some policy for mixed use.

Commissioner Mueller noted there is also need to determine if precise plans are consistent with the General Plan. SP Linder advised of the General Plan language for mixed use, the said the matter can be studied as part of the Downtown Plan update.

Several comments were offered by the Commissioners regarding the architecture of the project. Mr. Schilling again spoke from the audience, "We will work with ARB and take your comments into consideration."

Commissioner Tanda asked agendaization for discussion on effects of the placement of the high-speed rail lines. Others agreed, saying it would be beneficial to have a representative of the Railroad Authority, present for the dialogue to include discussion on inclusions for the EIR.

CITY COUNCIL REPORTS:

None

ADJOURNMENT: Noting that there was no further business for the Planning Commission at this meeting, Chair Koepp-Baker adjourned the meeting at 9:22 pm. and thanked Commissioner Davenport for outstanding participation, especially in the emphasis area of Build It Green.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk



MEMORANDUM

To: PLANNING COMMISSION

Date: December 9, 2008

From: COMMUNITY DEVELOPMENT DEPARTMENT

**Subject: ZONING AMENDMENT, SUBDIVISION & DEVELOPMENT
AGREEMENT & DEVELOPMENT SCHEDULE APPLICATIONS ZA 06-
011, SD 06-07 DA 06-04 & DS 08-05: Diana-Chan**

REQUEST

A request for approval of a precise development plan for a 117-unit single family development proposed on a 42-acre site located on the south side of Diana Ave between Murphy Ave and Ringel Dr. Also requested is the approval of a 34 lot subdivision map, development agreement, development schedule and extension of time.

RECOMMENDATION

Environmental Assessment:	Adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
Application ZA 06-11	Recommend City Council approval, subject to the findings and conditions contained in attached Resolution.
Application SD 06-07	Recommend approval, subject to the findings and conditions contained in attached Resolution.
Application DS 08-05	Recommend approval, subject to the findings and conditions contained in attached Resolution.
Application DA 06-04	Recommend City Council approval, subject to the findings and conditions contained in attached Resolution
Processing Deadline:	May 21, 2009

BACKGROUND

The proposed project, referred to as the Sherimar Ranch, received 13 FY 2007-08 & 5 FY 2008-09 building allotments in the 2004 Measure C competition. The project also received 14 FY 2009-10 allotments in 2006 as part of the distribution of the remaining 2009-10 allocations.

In June 2007, the Planning Commission approved a trade of allocations with the E. Dunne-Delco project which allowed 8 of the 13 FY 2007-08 allocations to shift to the Delco project and 8 of the FY 2008-09 allocations from the Delco project to shift to the Diana-Chan project. The resulting allocations for the Diana-Chan project after the trade process is 5, FY 2007-08 and 13, FY 2008-09. In April 2008, a 12 month extension was granted to the 5 2007-08 allocations which gave them the same "commencement date" as the 13, FY 2008-09 allocations.

PROJECT ASSESSMENT

Precise Development Plan: The project site is approximately 42 acres (five existing separate parcels) located between Murphy and Ringel Dr. The 42 acres is zoned R-1 12,000/RPD. The site is flat and is developed with four existing homes. Three of the four existing residences are proposed to be demolished and removed from the project site prior to development. The Shelton Family Farmhouse, located at 1480 Diana Avenue on the northwest portion of the site, would be preserved on a .56 acre site and will be incorporated into the proposed project. One existing home will be replaced in phase I making it a 19 unit phase (18 allocations + 1 existing); a second existing home is replaced in phase II making it a 15 unit phase (14 allocations +1 existing).

Vehicle access to the project site will be from Diana Avenue, Bradford Way and Jasmine Way. Two new public streets from Diana Avenue would provide vehicle access to the project from the north. Bradford Way, which currently terminates at the east project boundary, would be extended onto the project site. Two segments of Jasmine Way, which currently terminate at the south and west site boundaries, would also be extended onto the site. Eleven new residences proposed by the project would have driveways directly off Diana Avenue.

The proposed residences would be one or two stories tall and would range in size from approximately 1,000 to 3,800 square feet. Thirty eight of the proposed lots are 8,500 to 11,800 sq. ft., 26 are duet lots ranging in size from 3800 to 5600 sq. ft. and the remaining 53 are 12,000 sq. ft or greater. The reduction in the minimum lot size allows for the creation of the 1.65 acre park site which contains the storm water detention pond, tennis court, bocce ball court, tot lot and BBQ area. The sizeable park area, amenities and BMR units included within the development support the findings needed to allow the lot size exception requested through the PD designation.

The project's RDC application proposed a daycare center within the 1.65 acre park. The applicant has requested to modify the park plan to include a tennis court in-lieu of the daycare center. The RDCS application also committed to the preservation of the Shelton house for use as a meeting hall/banquet facility. The project received 2 points for the preservation of the house but did not receive points under the Parks and Path category for its use as a banquet hall/meeting room. The applicant is concerned that the on-going maintenance of the structure along with the

other park and open space amenities will make the HOA dues prohibitive. The applicant would like consideration to sell the Shelton house for use as a private residence after it is restored. The applicant is willing to place a deed restriction on the home precluding alterations that would not be in keeping with the homes original architecture.

A project phasing plan has been developed which shows the sequence of development and illustrates when various project improvement will be installed. For example Phase I (lots 1-1 thru 1-19) will complete the project frontage improvements along Diana Ave. Phase II (lots 2-1 thru 2-15) will loop the project circulation. Other off-site project improvements include a 7 ft. wide path on Main Ave. leading to Live Oak High School, completion of frontage improvements at the corner of Murphy and Dunne and widening of Condit Rd. The timing of the commitments is contained in the project's development agreement (Paragraph 14 (j) page 7).

Staff does not have any recommended changes to the overall layout of the proposed precise development plan but is recommending the following standard/requirements be included on the precise development plan to clarify the applicable development standards:

1. Minimum 50 ft. rear setbacks (recorded on map) on lots 1-9, 2-2, 2-3, 6-2 & 6-3.
2. Minimum 20 ft., westerly side setback (recorded on map) on lot 5-15
3. All non duet lots 9,000 sq. ft. or less in size shall meet the R-1 7,000 zoning standards.
4. All lots 10,001 sq. ft. to 15,000 sq. ft shall meet the R-12,000 zoning standards.
5. All lots 15,001 sq. ft. or greater shall meet the R-20,000 zoning standards.
6. Include statement on development plan which preclude any further division of the parcels.

The 117 unit project committed to 13 percent (6 low/9med) BMRs, 50 percent (59 units) alternative garage configuration, 10 percent (12 units) with granny units, 10 percent (12 units) moderate rate and 10 percent (12 units) single story units. The project development plan provides the appropriate totals and proportions per commitment. In Phase I, 10 of the units have alternative garage configurations, 3 BMR units (1 low/2 med), 1 moderate rate unit, 2 single story units, and 2 units with granny quarters. Phase II (15 units) includes: 1 low income BMR, 1 median income BMR, 2 moderate rate units, 3 single story units, 5 units with granny quarters and 8 with alternative garage configurations.

Environmental Assessment: Due to the existing and proposed development on the site, an expanded initial study was completed to evaluate the potential impacts that may result from development of the site. The initial study identified the following as potential impacts.

Air Quality: During construction, existing residents may be exposed to construction related dust. Standard mitigations such as water application, on-site speed limits and daily street sweeping will be applied.

Biological: Due to the number of existing trees on the site a pre-construction survey for nesting raptors is required prior to any tree removal. A preconstruction burrowing owl survey is also required as part of the City's Habitat Conservation plan. Significant trees to be saved will need to be fenced prior to any on-site grading.

Hazardous Materials: An existing on-site heating oil tank that was previously sealed will need to be removed and disposed.

Noise: The Diana II Well pump site creates noise that exceeds the City's interior noise standards for homes adjacent to the well site. The project is required to work with the City to construct an enclosure around the pump to reduce the noise levels below the City standards. Units adjacent to the pump will need to sign a disclosure notice regarding the noise from the emergency back up generator located at the pump site.

A traffic impact analysis was completed which concludes no significant impacts would occur from the project build out. A cultural resources evaluation also determined that none of the existing structures or sites is historically significant.

A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have been prepared which contains mitigation measures which should reduce both long and short term impacts to less than significant levels.

Tentative Map: The proposed vesting tentative map shows 19 residential lots plus one open space parcel in phase I and in phase II, 15 residential lots plus one lot around the Shelton House which is not currently numbered on the tentative map. As a condition of the tentative map approval, the open space parcel on Diana Ave. would need to be labeled as lot 1-20 and the Shelton house parcel labeled as 2-16. Due to some last minute changes to the project phasing plan, the lot configuration on the tentative map will need to be modified to reflect the phasing shown on the approved precise development plan. The remaining 83 units have not yet received allocations and a separate tentative map approvals will need to be filed once allocations are awarded for future phases.

Development Agreement & Development Schedule: The applicant is requesting approval of the project Development Agreement and Development Schedule. Project development agreements are required as a formal contract between the developer and the City. The Development Agreement formalizes the commitments made during the Measure C process. The project development schedule establishes a formal development schedule for the project. The project specific commitments are identified in Paragraph 14 of the Development Agreement, and the development schedule is contained in Exhibit B.

The applicant has requested a 12-month extension of the 5 FY 2007-08 allocations, the 13 FY 2008-09 allocations and the 14 FY 2009-20 allocations (letter attached). The following chart shows the extensions granted to date along with the current request:

DEVELOPMENT AGREEMENT	Original Dates	June 2007 Amended Dates	March 2008 Amended Dates	Current Request
Commencement of Construction		Traded 8 allocations with DeNova Homes		
FY 2007-08 (13 units)	06-30-08	FY 2007-08 became (5 units)	(+12mo.) 06-30-09	(+12 mo.) 06-30-10
FY 2008-09 (5 units)	06-30-09	FY 2008-09 became (13 units)		(+12 mo.) 06-30-10
FY 2009-10 (14 units)	06-30-10	FY 2009-10 (14 units) stayed the same		(+12 mo.) 06-30-11

The reason for the extension request is the current state of the housing market will not allow the project to move forward at this time. The applicant has also indicated that they may have found a buyer for the project (see attached letter). Given that the current financial crisis has stalled all development, staff is recommending approval of the 12-month extension request.

The applicant has also requested to be included within the BMR reduction program that will allow for the elimination or reduction of the project's BMR commitment. Reduction or elimination of the BMR requirement will depend on meeting certain construction deadlines and the applicant's willingness to include additional enhancements within the project. A workshop is currently scheduled for December 16 and the (12) development agreement amendment requests received are tentatively scheduled for Planning Commission consideration on January 27. Since the details of the program have not yet been worked out, staff is recommending the current development agreement request be placed on hold and be reconsidered along with the other 12 requests for inclusion in the BMR reduction program.

The project Development Agreement has been prepared and is attached as Exhibit A of the approval resolution. The Measure C commitments and development schedule have been included within the agreement.

Attachments:

1. Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
2. Resolution recommending zoning
3. Resolution approving subdivision
4. Resolution recommending development agreement
5. Resolution approving development schedule
6. Applicant request letter
7. Developer letter
8. Vicinity Map
9. Project Plans



COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

DRAFT
MITIGATED NEGATIVE DECLARATION

I. DESCRIPTION OF PROJECT:

Application #s: EA 06-22, ZA 06-11, SD 06-07, DA 06-04

APN: 728-19-001, 728-19-002, 728-19-003, 728-20-037, 728-20-038, and 728-18-012

Project Title: Diana-Chan

Project Location: Southern side of Diana Avenue between Murphy Avenue and Ringel Drive in Morgan Hill

Project Proponents:

Janet & Donna K. Martinez	William Shelton Et Al	Juanita Martinez Et Al	Manuel Rivera	Prime Home Development
1650 Diana Avenue	1480 Diana Avenue	1540 Diana Avenue	1463 Gergetta Drive	P.O. Box 387
Morgan Hill, CA 95037	Morgan Hill, CA 95037	Morgan Hill, CA 95037	San Jose, CA 95125	Cupertino, CA 95015

Project Description: The project proposes to construct 117 single-family attached and detached residential units on an approximately 42-acre site located on the south side of Diana Avenue between Murphy Avenue and Ringel Drive. Eight of the proposed residences would also include a detached in-law unit. The proposed residences would be one or two stories tall and would range in size from approximately 1,000 to 3,800 square feet on lots ranging from 4,215 to 30,809 square feet. The park would be approximately two acres in size and would contain the stormwater detention pond for the project along with other amenities compatible with park uses, such as a barbeque area.

II. DETERMINATION

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures are included in the project, and, therefore, this **MITIGATED NEGATIVE DECLARATION** has been prepared.

III. CONDITIONS (Mitigation and Avoidance Measures):

A. *Air Quality:*

The proposed project includes the following mitigation measures to reduce project construction impacts to a less than significant level.

- The Bay Area Air Quality Management District (BAAQMD) has prepared a list of feasible demolition and construction dust control measures to reduce construction impacts to a less than significant level. The following construction practices shall be implemented during demolition and construction phases of proposed project reduce dust and exhaust emissions:
 - Water active demolition areas to control dust generation during demolition of structures and break up of pavement.
 - Cover all trucks hauling demolition debris from the site.
 - Use dust proof chutes to load debris into trucks whenever feasible.
 - Water all active construction areas at least twice daily.
 - Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
 - Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
 - Pave, apply water three times daily, or apply (non toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
 - Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
 - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
 - Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
 - Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
 - Limit traffic speeds on unpaved roads to 15 miles per hour.
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - Replant vegetation in disturbed areas as quickly as possible.

- The following are additional mitigation measures recommended by the BAAQMD to reduce engine exhaust emissions:
 - Use alternative fueled construction equipment, when feasible.
 - Minimize idling time (five minutes maximum).
 - Maintain properly tuned equipment.
 - Limit the hours of operation of heavy equipment and/or the amount of equipment in use.

B. Biological Resources

Nesting Raptors

The following mitigation and avoidance measures would avoid possible impacts to tree-nesting raptors during construction:

- Removal of the trees on-site, as part of a proposed project, could be scheduled between October 1st and December 31st to avoid the raptor nesting season and no additional surveys would be required.
- If removal of the trees on-site would take place between January 1st and September 31st, a pre-construction survey for nesting raptors shall be conducted by a qualified ornithologist to identify active nesting raptor nests that may be disturbed during project implementation. Between January 1st and April 31st pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May 1st and August 31st, pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest until the end of the nesting activity.
- The applicant shall submit a report indicating the result of the survey and any designated buffer zones to the satisfaction of the Department of Community Development, Planning Division prior to the issuance of any grading permit.

Trees

All construction within the area that is 1.5 times the dripline of a tree to be retained by the project shall be reviewed and/or supervised by a certified arborist to ensure the survival of the tree after project construction.

C. Hazards and Hazardous Materials

The proposed project includes the following mitigation measures to reduce hazards and hazardous materials impacts to a less than significant level.

- Prior to issuance of a building permit, the oil tank shall be removed from the site and disposed of in accordance with federal, state, and local laws. The oversight agency will be contacted and a clearance letter will be obtained.

D. Noise

With the implementation of the following mitigation measures, noise impacts upon the residences proposed adjacent to the Diana II pump station would be reduced to a less than significant:

- The applicant shall coordinate with the City to design and construct an acoustical enclosure to house the turbine pump. The enclosure shall provide a minimum of 10 dBA of noise reduction to reduce hourly average noise levels to 50 dBA Leq or less and day-night average noise levels to below 60 dBA L_{dn} at the nearest residential property line. For example, a masonry block extension of the pump house and insulated roof (that fully encloses the pump) would provide about 10 dBA of noise reduction. The design of the pump enclosure shall also consider acoustical losses that would occur with ventilation of the enclosure itself and incorporate adequate design features such as acoustical louvers, etc.
- Residences proposed adjacent to the Diana II pump station would require mechanical ventilation to reduce interior noise levels to acceptable levels when the emergency generator is running.
- A disclosure notice shall be provided to all Prospective owners nearest the Diana II pump station regarding noise from the turbine pump and emergency diesel generator. The notification shall describe the level of noise generated by this equipment and indicate the possibility of the noise occurring at all hours.

With the implementation of the following mitigation measure, noise impacts upon the residences proposed along Diana Avenue would be less than significant:

- Residences proposed along Diana Avenue shall be provided forced-air mechanical ventilation systems to reduce interior noise levels to acceptable levels.

In addition to the standard noise controls listed in the Initial Study, the following measure shall be implemented by the project to reduce construction noise impacts to a less than significant level:

- The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. A "disturbance coordinator" will be designated to coordinate with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance. The disturbance coordinator will respond to all construction noise complaints, determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem.

III. FINDING

The City of Morgan Hill Community Development Director hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the initial study are included in the project.

Kathleen Molloy Previsich
Community Development Director

Date: _____

MITIGATION MONITORING AND REPORTING PROGRAM

Diana-Chan

(ZA 06-11, SD 06-07, DA 06-04 & EA 06-22)



January 2009

PREFACE

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

On January 14, 2009, the Mitigated Negative Declaration was adopted for the Diana-Chan project. The Initial Study/Mitigated Negative Declaration concluded that the implementation of the project could result in significant effects on the environment; therefore, mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program outlines these measures and how, when, and by whom they will be implemented.

MITIGATION MONITORING AND REPORTING PROGRAM
DIANA-CHAN (ZA 06-11, SD 06-07, DA 06-04 & EA 06-22)

Impact(s)	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
AIR QUALITY				
Construction-generated dust, if uncontrolled, could expose sensitive receptors to substantial pollutant concentrations.	<p>MM AIR-1.1: The Bay Area Air Quality Management District (BAAQMD) has prepared a list of feasible demolition and construction dust control measures to reduce construction impacts to a less than significant level. The following construction practices shall be implemented during demolition and construction phases of proposed project reduce dust and exhaust emissions:</p> <ul style="list-style-type: none"> • Water active demolition areas to control dust generation during demolition of structures and break up of pavement. • Cover all trucks hauling demolition debris from the site. • Use dust proof chutes to load debris into trucks whenever feasible. • Water all active construction areas at least twice daily. • Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind. • Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard. • Pavement, apply water three times daily, or apply (non toxic) soil stabilizers on all unpaved access roads and construction parking and staging areas. • Sweep daily (with water sweepers) all paved access roads and construction parking and staging areas. • Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets. • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more). • Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.). • Limit traffic speeds on unpaved roads to 15 miles per hour. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. 	To be implemented during construction by the applicant and contractors.	A dust control program, which includes the dust control measures identified in the Mitigated Negative Declaration, will be included in all contract specifications and implemented by contractors.	Director of Community Development Department

MITIGATION MONITORING AND REPORTING PROGRAM DIANA-CHAN (ZA 06-11, SD 06-07, DA 06-04 & EA 06-22)				
Impact(s)	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>MM AIR-1.2: The following are additional mitigation measures recommended by the BAAQMD to reduce engine exhaust emissions:</p> <ul style="list-style-type: none"> • Use alternative fueled construction equipment, when feasible. • Minimize idling time (five minutes maximum). • Maintain properly tuned equipment. • Limit the hours of operation of heavy equipment and/or the amount of equipment in use. 			
BIOLOGICAL RESOURCES				
Tree removal during the nesting season could impact protected raptors. Any loss of fertile bird eggs, or individual nesting birds, or any activities resulting in nest abandonment during construction, would constitute a significant impact.	<p>MM BIO-1: The following mitigation and avoidance measures would avoid possible impacts to tree-nesting raptors during construction:</p> <ul style="list-style-type: none"> • Removal of the trees on-site, as part of a proposed project, could be scheduled between October 1st and December 31st to avoid the raptor nesting season and no additional surveys would be required. • If removal of the trees on-site would take place between January 1st and September 31st, a pre-construction survey for nesting raptors shall be conducted by a qualified ornithologist to identify active nesting raptor nests that may be disturbed during project implementation. Between January 1st and April 31st pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May 1st and August 31st, pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest until the end of the nesting activity. • The applicant shall submit a report indicating the result of the survey and any designated buffer zones to the satisfaction of the Department of 	To be implemented by the project applicant prior to tree removal and/or site grading.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Community Development Department

MITIGATION MONITORING AND REPORTING PROGRAM DIANA-CHAN (ZA 06-11, SD 06-07, DA 06-04 & EA 06-22)				
Impact(s)	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	Community Development, Planning Division prior to the issuance of any grading permit.			
Project construction could harm trees to be retained by the project.	MM BIO-2: All construction within the area that is 1.5 times the dripline of a tree to be retained by the project shall be reviewed and/or supervised by a certified arborist to ensure the survival of the tree after project construction.	To be implemented by the project applicant during construction.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Community Development Department
HAZARDS AND HAZARDOUS MATERIALS				
The heating oil UST located on the project site at 1540 Diana Avenue that was closed in-place (tank not removed, filled with soil and sealed) should be properly removed and disposed.	MM HA-1: Prior to issuance of a building permit, the oil tank shall be removed from the site and disposed of in accordance with federal, state, and local laws. The oversight agency will be contacted and a clearance letter will be obtained.	To be implemented by the project applicant prior to issuance of a grading permit.	The measure shall be printed on all construction documents, contracts, and project plans.	Director of Community Development Department
NOISE				
Interior noise levels of the proposed residences nearest to the Diana II pump station and/or Diana Avenue would exceed 45 dBA Ldn, the interior noise level limit set by the City of Morgan Hill.	MM NOI-1 With the implementation of the following mitigation measures, noise impacts upon the residences proposed adjacent to the Diana II pump station would be reduced to a less than significant: • The applicant shall coordinate with the City to design and construct an acoustical enclosure to house the turbine pump. The enclosure shall provide a minimum of 10 dBA of noise reduction to reduce hourly average noise levels to 50 dBA Leq or less and day-night average noise levels to below 60 dBA Ldn at the nearest residential property line. For example, a masonry block extension of the pump house and insulated roof (that fully encloses the pump) would provide about 10 dBA of noise reduction. The			

MITIGATION MONITORING AND REPORTING PROGRAM DIANA-CHAN (ZA 06-11, SD 06-07, DA 06-04 & EA 06-22)				
Impact(s)	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>design of the pump enclosure shall also consider acoustical losses that would occur with ventilation of the enclosure itself and incorporate adequate design features such as acoustical louvers, etc.</p> <ul style="list-style-type: none"> Residences proposed adjacent to the Diana II pump station would require mechanical ventilation to reduce interior noise levels to acceptable levels when the emergency generator is running. A disclosure notice shall be provided to all Prospective owners nearest the Diana II pump station regarding noise from the turbine pump and emergency diesel generator. The notification shall describe the level of noise generated by this equipment and indicate the possibility of the noise occurring at all hours. <p>MM NOI-2 With the implementation of the following mitigation measure, noise impacts upon the residences proposed along Diana Avenue would be less than significant:</p> <ul style="list-style-type: none"> Residences proposed along Diana Avenue shall be provided forced-air mechanical ventilation systems to reduce interior noise levels to acceptable levels. <p>MM NOI-3 In addition to the standard noise controls listed above, the following measure shall be implemented by the project to reduce construction noise impacts to a less than significant level:</p> <ul style="list-style-type: none"> The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. A "disturbance coordinator" will be designated to coordinate with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance. The disturbance coordinator will respond to all construction noise complaints, determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. 			

SOURCE: City of Morgan Hill, *Diana-Chan Initial Study*, October 2008.

RESOLUTION NO. 08

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL
RECOMMENDING TO THE CITY COUNCIL THE
ESTABLISHMENT OF AN R-1 12,000/ PLANNED
DEVELOPMENT ON A 42 ACRE SITE LOCATED
ON THE SOUTH SIDE OF DIANA AVE BETWEEN
MURPHY AVE AND RINGEL DR. (APNS 728-20-1, 2,
3, 12, 37& 38)**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of December 9, 2008 at which time the Planning Commission recommended approval of application ZA-06-11: Diana-Chan; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

SECTION 4. The Planning Commission finds that the proposed precise development plan and Planned Development zoning district is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The Planning Commission hereby recommends approval of a precise development plan as contained in that certain series of documents dated December 5, 2008 (date of receipt by the Community Development Department) on file in the Community Development Department, entitled "Sherimar Ranch" prepared by M.H. Engineering and as amended as follows:

(1) All floor plans & elevation shall be reviewed by the Architectural and Site Review Board (ARB) prior to final map approval.

(2) The total Below Market Rate and moderate rate unit commitments for the project includes 6 low income units, 9 median income units and 12 moderate rate (non BMR) units. Each project phase shall have a proportionate share of BMR and moderate rate units.

SECTION 7: These documents, as further amended by site and architectural review, show the exact location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

PASSED AND ADOPTED THIS 9th DAY OF DECEMBER, 2008, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

SUSAN -KOEPP-BAKER, Chair

RESOLUTION NO. 08

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL APPROVING A
TENTATIVE MAP FOR A 34-LOT SUBDIVISION OF
A 42-ACRE SITE LOCATED ON THE SOUTH SIDE
OF DIANA AVE BETWEEN MURPHY AVE AND
RINGEL DR. (APNS 728-20-1, 2, 3, 12, 37& 38)**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of December 9, 2008, at which time the Planning Commission approved application SD-06-07: Diana-Chan; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The approval of this subdivision is contingent upon the City Council approval of a Planned Development overlay zoning amendment as contained in Zoning Amendment application, ZA 06-11: Diana-Chan.

SECTION 3. An environmental initial study was prepared and a mitigated negative declaration was filed for the entire 117-unit project as part of zoning application ZA-06-11.

SECTION 4. The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.

SECTION 5. The approved project shall be subject to the conditions as identified in Exhibit "A", and by this reference incorporated herein.

**PASSED AND ADOPTED THIS 9th DAY OF DECEMBER, 2008, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

SUSAN-KOEPP-BAKER, Chair

A F F I D A V I T

I, _____, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

, Applicant

Date: _____

RESOLUTION NO. 08

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF DEVELOPMENT AGREEMENT
APPLICATION DA-06-04: DIANA-CHAN FOR
APPLICATION MC-04-04: DIANA-CHAN (APNS 728-20-
1, 2, 3, 12, 37& 38)**

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 32 building allotments for application MC-04-04: Diana-Chan; and

WHEREAS, said development agreement request was considered by the Planning Commission at their regular meeting of December 9, 2008, at which time the Planning Commission recommended approval of development agreement application, DA-06-04: Diana - Chan.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT. The Planning Commission hereby recommends to the City Council, adoption of the Development Agreement for MC-04-04: Diana-Chan attached to this Resolution as Exhibit A.

**PASSED AND ADOPTED THIS 9th DAY OF DECEMBER 2008, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

SUSAN-KOEPP-BAKER, Chair

**RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2008, by
and between _____, under the Agreement, ("Property Owner") and
the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws
of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On _____, 2009, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2009.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On March 1, 2005 the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MC-04-04 Diana-Chan, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 117 single family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In

the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of single family low and zoning classification of R-1 12,000/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **School** features in the development:

(i) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(ii) Property owner will install the following off-site pedestrian safety improvements or traffic safety improvements near a MHUSD school:

- A safe walking pathway from the project to Live Oak High School or any other MHUSD preferred safety improvements at a cost of \$3,300 per unit based on the Safe Walking Route to School Study these improvements cannot be redundant of improvements committed to in other categories. The cost of the improvements must be valued at \$ 3,300 per point per unit.

(i) Property Owner agrees to include the following **Open Space** improvements in the development:

(i) All parks and open space within the project will be maintained by a neighborhood homeowners association.

(ii) Project provides a 7 ft. wide (minimum), paved (or other durable surface) bicycle and pedestrian pathway within the landscaped area. The bicycle and pedestrian path shall be within an open space area which is a minimum of 20 ft. wide with an average width of 30 ft. (for the entire length of the path).

(iii) Project will rehabilitate and preserve the existing farmhouse along with its original setting. A deed restriction placed on the parcel on the parcel specify all future improvements, additions and alteration be in compliance with the Secretary of Interior Standards.

(iv) The project shall purchase transferable development credits at a ratio of one TDC for every 25 units. The overall project contains 117 units and is required to purchase a total of 4.68 TDC's. The per unit TDC payment shall be collected on a per unit basis at the time of building permit issuance.

(j) in the development: Property Owner agrees to include the following **Public Facility** features

(i) The project shall grids water mains between Diana Ave, Jasmine Way and Bradford Way

(ii) The project drainage shall be consistent with the City's storm drain system.

(iii) Project commits to install public facilities on/adjacent to project site, or as directed/designated by City at a cost of at least \$4,400, over and above other commitments, per allocated unit.

(iv) Project storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works. .

(v) Applicant will contribute \$ 1100 per unit to the Local Drainage Non-AB1600 fund for off-site storm drainage improvements, in addition to payment of standard fees.

(vi) Project shall contribute \$1,100 per unit to the Capital Improvements Program Fund

(vii) Applicant will provide the following public facility or pedestrian improvements including pavement widening, curb, gutters and sidewalks on or adjacent to the project in excess of standard requirements:

- As part of Phase I (19 units) the project shall install full street improvements along the project's Diana Ave. street frontage.
- As part of Phase II (15 units) the project shall install public half street improvements including pavement widening, curbs, gutters and sidewalks along the southerly side of Diana Ave. to Murphy Avenue at a cost of \$906 per unit.

- As part of Phase III (15 units), 7' of additional pavement shall be provided along the southerly side of Diana Avenue and the easterly side of Condit Road to connect to East Dunne Avenue at a cost of \$1,627 per unit. Installation of city standard sidewalks, or pathways which are redundant of city standard sidewalks do not fulfill this requirement.
- As part of Phase IV (15 units) the project will construct a reinforced street section on the north side of E. Main Ave. per the Sept. 1, 2004 VTA letter and have the improvements accepted by the VTA for maintenance.
- As part of Phase V (15 units) the project will widen E. Main Avenue, 7' from said APN to Live Oak High School at a cost of to \$4,776 per unit.
- As part of Phase VI (15 units) the project will dedicate and install full half street improvements including pavement, curb, gutters and sidewalks at a cost of \$3,407 per unit on the Busk property located at the southeast corner of E. Dunne Avenue and Murphy Avenue and Advent Lutheran Church located on Murphy Avenue.
- As part of Phase VII (15 units) the project will widen the west side of Murphy Avenue across Pan Cal property including pavement curb, gutter and sidewalks for the dedication of 46' wide half street at a cost of \$2,733 per unit.
- As part of Phase VIII (15 units), the project shall complete any kind of project that might be needed at a cost of \$3,300/unit.

improvements: (k) The Property Owner agrees to provide the following **Park and Recreation**

- (i) Project will pay the Lesser of Double in-lieu fees or \$3300 per unit
- (ii) In addition to payment of standard park fees, the project will pay the lesser of double the required in lieu park fees up to \$ 3300 per unit.

(iii) The project will install the following pedestrian and bicycle improvements beyond the project frontage:

- Class 2 bicycle lane along Diana Avenue, from Murphy Avenue to Hill Road per stated requirements

(iv) Project will provide a 2.5 acre park with the following amenities: Bocce ball, tot lot and childcare center

(v) Each project phases shall provide the following park amenities within the

(l) Property Owner agrees to include the following **Housing Types & Housing Needs** in the development:

(i) Project shall provide the following housing types:

Phase one (18 units + 1 replacement)

1 Low income BMR: 4 bedroom, 2 bath and approx. 1250 sq. ft.

1 Median income BMR: 4 bedroom, 2 bath and approx. 1400 sq. ft.

2 Moderate Rate*: 5 bedroom, 3 bath and approx. 1780 sq. ft.

2 Single story units

2 Units with secondary dwelling units

5 Units (25%) shall have porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project

9 Units (50%) shall have side-loading, detached, rear garages, or two car garages with tandem parking space. to accommodate a third vehicle inside the garage.

*The final sales price (at close of escrow) for the four moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

Phase two (14 units +1 replacement)

1 Moderate Rate*: 5 bedroom, 3 bath and approx. 1780 sq. ft.

1 Low income BMR: 4 bedroom, 2 bath and approx. 1250 sq. ft.

1 Median income BMR: 4 bedroom, 2 bath and approx. 1400 sq. ft.

1 Single story unit

1 Unit with secondary dwelling units

4 Units (25%) shall have porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project

7 Units (50%) shall have side-loading, detached, rear garages, or two car garages with tandem parking space. to accommodate a third vehicle inside the garage.

*The final sales price (at close of escrow) for the four moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

(ii) Project shall provide 13 percent of the units as BMRS (6 Low income units and 9 Median income units).

(iii) The Property Owner shall provide at least two (2) of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. (One) BMR unit shall be under construction and the framing inspection

passed prior to the issuance of the (Phase II) building permits. The remaining Phase 2, (1) BMR unit shall be under construction and framing inspection (as defined in the UBC) passed prior to the issuance of Phase III building permits

(iv) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(v) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.

(vi) Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.

(vii) The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.

(viii) All BMRs will be processed using the guidelines, requirements, and pricing in effect at the time they are released for sale."

(ix) Exterior trim entry door hardware, and finish to the same standard as the Market Rate.

(x) Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.

(xi) Minimum Interior standard finishes will be as follows:

- All closets shall have doors
- Interior doors to be raised panel type or same as market rate
- Door hardware to be brass finish or the equivalent
- Appliances shall be major brand name
- Microwave with an exhaust vent shall be installed over the range.
- Kitchen counters shall be white ceramic tile
- Kitchen cabinets shall be stained wood with white melamine interiors
- Units will be roughed in for AC including electrical and line set.
- Basic alarm system to secure all accessible openings to the home

- Carpet in bedrooms, hallways, family rooms
- Linoleum or tile in entry, bathrooms kitchens
- Laminate flooring may be substituted for carpet or linoleum
- Electric garage door opener

(xii) The Property Owner agrees to the following conditions for the development of the custom lot within the project.

a. All future custom lot buyers shall be subject to compliance with the provisions of this development agreement.

b. The project developer shall not place any private agreements/contingencies on any of the "For Sale" lot (such as requiring the buyer to use the project developer to construct the home). The project developer may through CC&R's or deed restriction, establish a minimum square footage of building area for the custom lot and/or establish minimum architectural standards to ensure compatibility with the project developer-built homes in the subdivision.

c. Designated "For Sale" lots may be sold to other development entities, such as a general contractor specializing in custom home construction. Sales to other development entities (any one developer) shall not exceed the greater of two units or 25 percent of the designated "For Sale" lots. In addition, at least 50 percent of the designated "For Sale" lots must be sold to private individuals. Note: Lots not meeting the above may still be sold for development by others, however, these lots shall not qualify for the two-year extension provided above. Such sales do not relieve the project development entity from all commitments and requirements as outlined above and may increase the risk of not meeting the 50 percent "under construction" for "partially-completed" status. Projects that are not at least 50 percent completed under the original building allotment are not eligible to draw from the partially completed building allotment set-aside.

d. A buyer/owner (private individual) who selects for his or her builder either the project developer or other developer entity under subsection (v) above, must take title to the property and pull a building permit in his or her own name (as the owner/builder)

e. The two-year extension date for custom lot development would be maintained as long as the conditions above are met. If the project developer receives an extension from the City Council for a project phase, all "For Sale" lots in the corresponding phase of the project would also be extended. If the project developer does not receive an extension for a project phase for a "For Sale" lot, the individual owner/developer of that lot may apply for a one year extension. If the "For Sale" lot owner is unable to meet the commencement of construction threshold by the end of the one year extension, the "For Sale" lot owner would still be eligible to compete in the partially completed set-aside category, provided the overall project has satisfied the requirement for "partially complete" status under current City Council policy.

f. Construction on the custom lots shall commence within two years of the expiration date of the project's fiscal year building allotments, as identified in the

project Development Schedule. If construction fails to commence within the two-year period, a building allotment must be obtained from the partially completed set-aside.

(m) Property Owner agrees to include the following **Quality of Construction** features in the development:

- (i) A repeat factor for model/elevations of 3.5 or less.
- (ii) All homes will have EPA "Energy Star" labeled windows with low-e coatings and vinyl or metal frames,
- (iii) Provides two separately zoned high-efficiency heating systems in units over 3000 square feet, and units less than 3000 square feet whose floor plans allow effective dual-zoning. At least 60 percent of the dwelling units in the project must be dual-zoned and all units must include the installation of high efficiency gas furnaces with 90 percent efficiency rating or greater.
- (iv) Recirculating hot water system with demand pumping.
- (v) Installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing.
- (vi) Class A roof covering
- (vii) Glued and screwed sub-floors, insulation of interior walls for sound.
- (viii) Use at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc.
- (ix) Each standard trim and base color must represent no more than of the project

(o) The Property Owner agrees to provide the following **Safety and Security** improvements:

- (i) Provides fire escape ladders for upper floor bedrooms and one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, and one additional extinguisher for each additional 1,500 square feet of floor space or fraction thereof.
- (ii) Provides a first aid kit with a poison control document to be installed in the kitchen area of the home.
- (iii) Provide soffet roof overhangs ("box in") and stucco for fire safety.
- (iv) Provide outdoor lighting to meet all police department specifications.

- (v) Noncombustible is used on at least 50 percent of the total units and comprises at least 75 percent of the siding of an individual unit.
- (vi) Installation of an intrusion, fire alarm and heat detector system, monitored by a central station, or to include auto dialer which meets City ordinance. Will also provide a one-year contract with the new home purchase.
- (vii) Neighborhood Emergency Preparedness Program administered through a homeowners association.
- (viii) Hardwired carbon monoxide detection device or devices with battery backup. The installation of the devices are to be located per manufacturer's requirement with at least one detector per floor of the residence.
- (ix) The developer shall include provisions in the Convents, Conditions and Restrictions (CC&R's) of the Homeowner's Association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development. For rental projects, neighborhood watch programs shall be administered through a central property management.

(p) improvements:

The Property Owner agrees to provide the following **Landscaping**

- (i) Twenty-four inch box-size trees from a city approved list, with a minimum height of nine feet and a spread of three to four feet. The box-size trees will be provided within the development at a ratio of one box-size tree per ten trees provided with the landscape area to be installed by the developer. The one box size tree per ten trees calculation does not include street trees.
- (ii) Sufficient planting shall be provided around all necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.
- (iii) Varied front yard landscaping plans are installed by the developer.
- (iv) Deciduous trees will be planted along the south facing side of homes or buildings.
- (v) All street trees are twenty-four inch box trees from the city approved list.

(vi) Project provides street trees consistent with the Street Tree Master Plan that addresses tree selection, location of trees on each lot, proper tree spacing, and preservation of any existing trees.

(vii) Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn. The twenty-five percent lawn coverage calculation is exclusive of landscape area within parks.

(viii) Automatic irrigation systems utilize separate valves and circuits for trees; shrubs and ground covers; and lawn areas. Minimum of three separate valves required. A separate valve shall be provided for the following areas: front lawn, rear lawn, and for trees, shrubs and groundcover (combined) where viable. If trees, shrubs, and groundcover cannot be combined under 1 valve, a separate valve for trees shall be provided, resulting in a minimum of 4 separate valves required. Water conserving irrigation system is also used within the development, i.e., drip irrigation.

(ix) The landscape to be installed by the developer will include hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area. Pedestrian walkways across circulation aisles are not included in this item.

(x) For at least 75% of all plant material, uses water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.

(xi) Project provides a separate water source (existing well) to irrigate common area landscape areas.

(xii) Landscaping shall be installed on all areas visible from public and private rights-of-way.

(q) The Property Owner agrees to provide the following **Natural and Environmental** improvements:

(i) Minimal grading is required which is considered a fill or excavation of less than two feet in depth (three feet is acceptable for detention ponds).

(ii) Preserves existing trees and natural settings by locating park or common open space areas around significant trees.

(iii) Dry wall is source separated and recycled.

(iv) Wood waste is source separated for recycling or composting.

(v) Cardboard containers and boxes are source separated and recycled.

(s) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(t) The project shall provide the following information, by address for each unit, to the Community Development Department:

- | | |
|-------|------------------------|
| (i) | Date of sale |
| (ii) | The number of bedrooms |
| (iii) | The final sales price |

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owners: Janet & Donna Martinez
1650 Diana Ave.
Morgan Hill, CA 95037

William Shelton
1480 Diana Ave.
Morgan Hill, CA 95037

Juanita Martinez
1540 Diana Ave.
Morgan Hill, CA 95037

Manuel Rivera
1463 Gergetta Dr.
San Jose 95125

Prime Home Development
Pac Soon Chan
P.O. Box 387
Cupertino, CA 95015

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

Danny Wan
City Attorney

J. EDWARD TEWES, City Manager

Attest:

PROPERTY OWNER(S)

IRMA TORREZ, City Clerk

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MC-04-04 Diana-Chan

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MC 04-04: Diana-Chan
5, FY 2007-08 allocations/13, FY 2008-09 allocations/14, FY 2009-10 allocations**

I. Commence Construction:

FY 2007-08 (5 units)	06-30-10
FY 2008-09 (13 units)	06-30-10
FY 2009-10 (14 units)	06-30-11

Failure commence construction by the date listed above shall result in the loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 58 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

**LEGAL DESCRIPTION
MC 04-04: Diana-Chan**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All of Lot 82, as shown upon that certain Map entitled, "Morgan Hill Ranch Map No. 1 being C.H.Phillip's Subdivision of part of the Rancho Ojo de Agua de La Coche and La Laguna Seca in the County of Santa Clara, California", which Map was filed for record in the Office of the Recorder of the county of Santa Clara, State of California, on June 1, 1892 in Volume "G" of Maps, at Pages 2 and 3. APN: 728-19-001

All of Parcel A as shown upon that certain Parcel Map entitled, "Parcel Map of Lot 83 of Morgan Hill Ranch Map No. 1 (Book G of Maps Pages 2 & 3)", which Map was filed for record in the Office of the County of Santa Clara, State of California on June 25, 1974 in Book 342 of Maps, Page 16. APN 728-19-002

Parcel B, as shown on that certain Map entitled "Parcel Map", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 25, 1974 in Book 342 of Maps at page(s) 16. APN 728-19-003

Portion of Lot 84, as shown upon that certain Map entitled, "Morgan Hill Ranch Map No. 1", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on June 1, 1892 in Book "G" of Maps, at Pages 2 and 3, and more particularly described as follow:

Beginning at the point of intersection of the dividing line of Lots 83 and 84 with the centerline of Diana Avenue, 66 feet in width, as said lot and Avenue are shown upon the Map above referred to; thence from said point of beginning North 45 deg. 23" East along the said centerline of Diana Avenue for a distance of 165.00 feet; thence leaving last mentioned line and running South 44 deg 37' East and parallel with the said dividing line of said lots 83 and 84 for a distance of 1320.00 feet to a point in the Southeasterly line of said Lot 84; thence South 45 deg. 23' West along said lines mentioned line for a distance of 165.00 feet to the said dividing line of said Lots 83 and 84; thence North 44 deg. 37" West along last mentioned dividing line for a distance of 1320.00 feet to the point of beginning. APN 728-20-038

RESOLUTION NO. 08

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL APPROVING
DEVELOPMENT SCHEDULE DS-08-05 FOR
BUILDING ALLOCATIONS FOR FY 2007-08, FY
2008-09 & 2009-10 FOR APPLICATION MC 04-04:
DIANA-CHAN (APNS 728-20-1, 2, 3, 12, 37& 38)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 32 building allotments for application MC-04-04: Diana-Chan; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System (RDCS), Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, prior to October 25, 2006, Development Agreements incorporated a development schedule to ensure projects comply with the statutory deadlines of the RDCS; and

WHEREAS, to extend deadlines outlined in the development schedule, a property owner/developer was required to file an application to amend the Development Agreement which required public hearings and adoption of an ordinance by the City Council; and

WHEREAS, rather than continuing to require developers to go through a legislative process to amend their development schedules, the Planning Commission adopted Policy PCP-06-01 which allows development schedules and extension of time requests to be approved and adopted by Planning Commission Resolution on consent calendar; and

WHEREAS, PCP-06-01 became effective on October 25, 2006; and,

WHEREAS, the development schedule for application MC-04-04: Diana-Chan was considered by the Planning Commission at their regular meeting of December 9, 2008, at which time the Planning Commission approved a project development schedule.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. ADOPTION OF DEVELOPMENT SCHEDULE. The Planning Commission hereby adopts the Development Schedule for MC-04-04: Diana-Chan attached to this Resolution as Exhibit "A" contingent upon City Council approval of the Zoning Amendment (ZA 06-11), and Development Agreement (DA 06-04).

PASSED AND ADOPTED THIS 9TH DAY OF DECEMBER 2008, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

SUSAN-KOEPP-BAKER, Chair

AFFIDAVIT

I, _____, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

, Applicant

Date: _____

EXHIBIT "A"

**DEVELOPMENT SCHEDULE MC 04-04: Diana-Chan
5, FY 2007-08 allocations/13, FY 2008-09 allocations/14, FY 2009-10 allocations**

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	06-30-06
II.	SITE REVIEW APPLICATION	
	Application Filed:	04-30-09
III.	FINAL MAP	
	Submittal of Map, and Improvements Agreement:	
	FY 2007-08 (5 units)	10-31-09
	FY 2008-09 (13 units)	10-31-09
	FY 2009-10 (14 units)	10-31-10
	Map, Improvements Agreement and Bonds approved by Council	
	FY 2007-08 (5 units)	03-30-10
	FY 2008-09 (13 units)	03-30-10
	FY 2009-10 (14 units)	03-30-11
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	
	FY 2007-08 (5 units)	01-30-10
	FY 2008-09 (13 units)	01-30-10
	FY 2009-10 (14 units)	01-30-11
V.	BUILDING PERMITS	
	Obtain Building Permits:	
	FY 2007-08 (5 units)	05-30-10
	FY 2008-09 (13 units)	05-30-10
	FY 2009-10 (14 units)	05-30-11

Submitting a Final Map Application or a Building Permit one or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

**DIVIDEND HOMES, INC.
385 WOODVIEW AVE., SUITE 100
MORGAN HILL, CA 95035
(408) 779-5900 FAX (408) 779-3840
"roliver@dividendhomes.com"**

December 4, 2008

Ms. Terry Linder
Community Development
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Sherimar Ranch Project

Dear Terry:

I wanted to confirm to you that we are in negotiations to purchase the Sherimar Ranch Project. I have been working with Maureen Upton these past eight weeks on the changes to the phasing and plans and on the Development Agreement and development schedule for the project. .

We have every expectation to be able to reach a mutually acceptable agreement in the near future; and, we are looking forward to working with the owners and with the City for the development of this project.

I will be at the Planning Commission Meeting this next week and will be pleased to respond to any questions at that time. In the meantime, feel free to call me if I can provide any additional assistance.

Very truly yours,

DIVIDEND HOMES, INC.

Dick

By: Richard B. Oliver
President

Cc: Maureen Upton

DEC 01 2008

CITY OF MORGAN HILL

**Sherimar Ranch Property
18690 Purissima Way
Morgan Hill, CA 95037**

November 28, 2008

Mr. Jim Rowe
Planning Manager
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Dear Mr. Rowe

Re: Update regarding the Diana-Chan / Sherimar Ranch Project (MC 04-04)

The purpose of this letter is to provide the Morgan Hill planning staff and Planning Commission a current status report on our project.

We have worked with the planning staff regarding our development agreement and we are requesting a 12 month extension for our existing allocations. Until there is a sufficient positive turn-around in new home market, it would not be financially prudent to require a developer to pull building permits for construction of new homes.

The meltdown in the economy and on-going down-turn in the real estate market continue to negatively impact new home construction financing.

Additionally, we request that our project be included in the revised BMR program recently approved by the City Council.

We have been aggressively marketing our project and we are currently in negotiations with Dividend Homes to purchase the project.

In conclusion, we request the Planning Commission give favorable consideration to approving a 12 month extension as reflected in our development agreement proposed time line.

Sincerely,

Sheirmar Ranch (Diana-Chan MC 04-04) Property Owners

- Pak-Soo Chan/United Friendship Association
- Martinez Family Property
- Rivera Family Property
- Shelton Family Property



AGENDA ITEM
NO. 2-11

MEMORANDUM

To: PLANNING COMMISSION

Date: December 9, 2008

From: COMMUNITY DEVELOPMENT DEPARTMENT

**Subject: RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) PUBLIC
HEARINGS FOR THE SMALL, MULTI-FAMILY RENTAL AND OPEN
MARKET PROJECT COMPETITIONS**

BACKGROUND

Public hearings have been scheduled for each application received in this year's Residential Development Control System competition. Applicants were mailed letters advising them of the hearings and property owners located within 300 feet of each project site were mailed public notices. Twelve (12) project applications were accepted for this year's RDSCS competition. Public Hearings for each projects have been advertised for the December 9 Planning Commission meeting and continued to a special meeting the following evening, December 10, 2008 if needed to complete the public hearings. The meeting on December 10 will be held in the Madrone Room at the City's Community and Cultural Center. Resolutions approving the adjusted project scores for all the competitions will be approved at the January 13, 2009 Planning Commission meeting.

DISCUSSION

Scoring Corrections:

Upon reviewing the written comments to the staff evaluation, several scoring corrections were identified. At Tuesday's Planning Commission meeting, staff will identify the scoring corrections required for the affected projects. The revised score sheets (Exhibits A & B) will be distributed prior to the meeting.

Scoring Methodology and Global Issues:

Staff and Commissioner Lyle have identified several issues that will require Planning Commission discussion and resolution before we can complete the final scoring process. The following are the issues that were identified:

1. Housing Needs Category Criterion B2: Projects are being awarded full points with less than the 15% requirement. The category does not state "up to 2", but 1.5 might be a better award than either two or zero. What metric did staff use to award points? (affects applications #17, 23, 24)

Housing Needs #2 Reads:

The project provides 15 percent of the total dwelling units with secondary (granny) units. In lieu of secondary dwelling units, projects in an R-2 district provide 15 percent or less of the overall units as single detached dwellings. (two points)

Staff's understanding is that projects that are in R-2 zones and comply with this criterion of "15 percent or less of the overall units as single detached" are entitled to the full award of points.

2. Housing Needs B4a & Housing Types B2a: A number of projects that are claiming to be providing 8% low & 2% med/mod are NOT achieving the 8% so they should get less points in one or both categories. (#16 is close & can catch up, 17, 19)

Housing Needs #4a

Table requires "8% of total units to be priced as Low Income Units and 2% of total units to be priced as either Median- or Moderate- Income Units."

Many applicants confused the "Med/Mod" label in the table as suggesting that units priced at 110% of area median income being Median Income Units when in reality they are considered Moderate Income Units.

3. Lot Layout Category B1a: Should granny units or other outbuildings also have to meet the 20% excess setback requirement to get this point?

Staff did not score it that way. Granny units did not have to exceed minimum. Staff looked for excess setbacks for the primary dwelling. We think a variety in setbacks is important.

In addition, do all parts of the structure(s) have to meet the 20%, or just the structures' average distance? (#13, 16). ***Not all parts have to meet the 20%, again Staff looked for variety.***

Project 24 is also awarded the point for averaging the setbacks of two units. Should that be allowed? Assuming that having some such flexibility is good, there may need to be some criteria clarification.

Staff looked for the majority (>50%) of the units to meet the criteria. We interpreted the criteria to eliminate the redundant 10 ft. wide tunnel between each house. The criterion talks about "avoid crowding" and "enhance spatial relationships" if every setback was exactly 20% in excess house after house Staff believes it would have the same monotonous effect we are trying to avoid. Some flexibility is good especially for the R-2 projects trying to reach higher densities.

On the other hand, #16 thru the PD process is proposing lot sizes that are at least ½ the base zoning. If we hold the lots within the RE 40,000 area to the base zoning side setback requirement they would need side setbacks of 24 ft. (which they do not have) to meet the criterion. If we hold them to the R-20,000 (18 ft. needed), they are fine at least on one side of the units. In addition, sufficient detail was not provided for west side of the project. Staff cannot tell what the lot sizes are or the setbacks provided. Should we to take the applicant's word and give them the point?

4. Schools B3, Public Facilities B2f & Circulation Efficiency B3: Several applicants did not consult with Public Works to identify and commit to specific offsite public improvements. The narratives read: "Applicant will provide offsite street improvements from the city's approved list at a rate of \$1,100 to \$4,400 per unit per stated requirements."

Should this be allowed given that applicants are making the dollar commitment?

Planning Commission's Livable Communities Category Project Excellence Point:

Under criterion B1 of the Livable Communities category, proposed project phase(s) are subjectively judged by the Planning Commission to be superior with respect to overall project excellence. (**two points** when awarded by a super majority of the voting members, or **one point** when awarded by a majority of the voting members of the Planning Commission). The determination of project excellence will include input from the Building and Planning Divisions and the Public Works Department regarding the performance of the developer during any previous building permit processes. The timeliness and accuracy of the application submittal by the developer for any previous project will be an important consideration. Negative performance factors include more than two plan checks and/or projects, which submit for building permits prior to ARB approval and prior to application for Final Map approval. No recommendation will be provided for developers who have not previously built in the City. *Staff will provide information regarding a developer past performance at the December 9-10 meetings. Commissioner should evaluate each project prior to the scheduled meetings and determine which projects are superior. The Commission will award the Project Excellence Points at the*

January 13, 2009 Commission meeting along with approval of final scores for all of the competing projects.

Public Hearing procedure:

Staff is recommending that the Commission utilize the format used for the public hearings last year.

Prior to the start of the public hearings, it is recommended that the Planning Commission reach a consensus on any "global issues" with respect to the methodology for assigning points. Once a consensus is reached on the proper scoring method, no further discussion (on a project by project basis) would be necessary except to acknowledge that the agreed upon methodology would result in a scoring adjustment for a given project. In addition, it would be helpful if any "ground rules" for conducting the public hearings is determined in advance for the benefit of the applicants and the public.

To conclude the public hearing for the eleven Measure C applications at the January 11 meeting, the Planning Commission may wish to limit the public hearing time on each proposal. In the past, the Commission has conducted the public hearings in the following manner:

1. Request all who wish to speak to fill out Speaker Cards and give to the Minutes Clerk.
2. Staff will respond to the written comments regarding the staff evaluation.
3. Comments by applicants should be limited to five minutes per project.
4. Comments by citizens should be limited to three minutes. Request that citizens not repeat comments made by others. Rather, only indicate agreement with other speakers.
5. At the close of each public hearing, the Planning Commission should focus on issues that would result in change of points, and direct staff to change points where a majority of the Commission requests a reevaluation. A possible modification in the point scores may result from this further review.

To expedite the overall review process, the Commission is encouraged to limit its review to projects that are in close competition for the available building allotment. In other words, if a project, based on the initial scoring, is well down on the list of eligibility, then it may not be necessary to spend a lot of time discussing the individual scoring adjustments for that project.

Applicants were encouraged to submit written responses to the staff recommendations. Written comments received by December 5, have been attached to this staff report.

Based on policy direction received from the Planning Commission at the December 9 and 10 meetings, and review of the testimony and written comments received, a further evaluation of each project will be conducted. This further review may result in adjustments to the recommended point scores for some projects. Any adjustments in the point scores will be contained in a staff report for the January 13, 2008 Planning Commission meeting.

To assist staff in our final review, it is requested that Commissioners identify the specific criteria within the evaluation categories that should be reevaluated. In addition, given the short turnaround between the public hearings and the meeting date for final action, we would ask that the Commission limit requests for reevaluation only in those areas where the point adjustments would change the total point score for a project in a given category or affect a project's eligibility to receive a building allotment. It would also be helpful if the requests for scoring changes were limited to those projects and specific criteria where the Commission by majority, agrees there should be a reevaluation.

RECOMMENDATION

At the close of public hearing for each RDCS application, the Planning Commission should vote on any further scoring adjustment. Based on the final scores approved at the December 9 and 10 meetings, staff will prepare a resolution for adoption at the January 13, 2009 meeting.

Please bring your revised project narratives and plans to the Planning Commission meeting.

Attachment: Correspondence from RDCS applicants.

MSJ Green Building Consulting

546 Hilbar Lane, Palo Alto, CA 94303
Tel: 650.799.7100 Fax: 650.989.1263



December 5, 2008

To: Jim Rowe, Rebecca Fotu
City of Morgan Hill

Cc: Monterey Dynasty, LLC

AGENDA ITEM
NO. 2

Re: MC-08-18 Diamond Creek Villa – Monterey Dynasty

Dear Jim,

This letter is in response to the Build It Green checklist comments that we received from the City of Morgan Hill planning commission for the above project. I am surprised and disappointed that we did not get the full 15 points on Quality of Construction. The city is request for two sets (one 131 points checklist and the other with 20% buffer points) of checklist for a project is unusual and very confusing to me as a GreenPoint Rater. Usually, I only produce and submit a single checklist for a given project. This checklist should already include any buffer points (usually 15%-20%) that I always advise my clients to include. During different phases in construction, client can drop or implement any measure that they have checked in the BIG's checklist or even add a new measure. As long as they achieve the minimum points required in each specific category, they will be awarded a GreenPoint Rated certificate from Build It Green. In our case, we submitted a Single Family Checklist of 158 points for this project and I think we should be awarded the full 15 points on Quality of Construction.

From your comments, you mentioned the buffer points did not reflect measures that can be taken in the event that the project did not meet the 131 point requirement at final building inspection. As a rater, it is my duty to work closely with my client to ensure they reach their target points at the final inspection. We start work with our client from day 1 till the end of the construction. We will constantly communicate with our client during the entire construction process. Also, we will make a number of site verification visits to ensure progress is made and there are no surprises. It is our practice to ask our client to provide us with all documentations that are required to achieve a particular measure during each phase of the construction. This will enable us to monitor our client's progress, to advise them when problem arises and to recommend action items so that they can reach their target points at the final inspection.

We have selected measure (B)1a to divert 80% of construction waste as a buffer point measure. Since we have already committed to divert 65% of construction waste, to divert an addition 15% is entirely possible as long as we opt for this measure in the early phase of the construction.

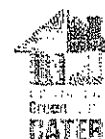
From our 131 points checklist we submitted, we did not checked any renewable energy measures and we only checked the pre-plumb for solar hot water & pre-wire for PV in the 158 points buffer checklist. So, if all goes well in the 131 points checklist that our client has committed to do, we will not be using these renewable energy measures.

As for the low VOCs measures, Build It Green does not mandate these measures. The only requirement in the IAQ/Health category is to achieve a minimum of 5 points. If these measures are City of Morgan Hill mandatory requirement, then we will make sure that they are implemented.

I hope I have answered your concerns. Please do not hesitate to contact me if you have any other questions with regard to this project or BIG questions.

Yours sincerely,

Michael Chau B. Eng., CGBP, GPR
Consultant



16075 Vineyard Blvd.
P.O. Box 1029
Morgan Hill, CA 95038
(408) 779-7381 / 226-3050
(408) 226-5712 Fax



MH engineering Co.

225 Sixth Street, Suite B
P.O. Box 1037
Hollister, CA 95023
(408) 637-1645
Fax (408) 637-3412

AGENDA ITEM
NO. 2

December 3, 2008

MH26019

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

PLANNING DEPT.

DEC 05 2008

CITY OF MORGAN HILL

RE: Final Scores for MC-08-18: Monterey- Monterey Dynasty

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Parks and Paths: Page 28 Criteria 8

The Open Space was shown on The Site Development Plan in the Data Table as 3.648 Ac. After further review the Open Space that qualifies for a private park as shown on the attached exhibit calculate to be 2.00 ac. This represents 157% of the required 1.27 acres.

Request 4 additional points.

Circulation Efficiency: Page 50 Criteria 1.f.

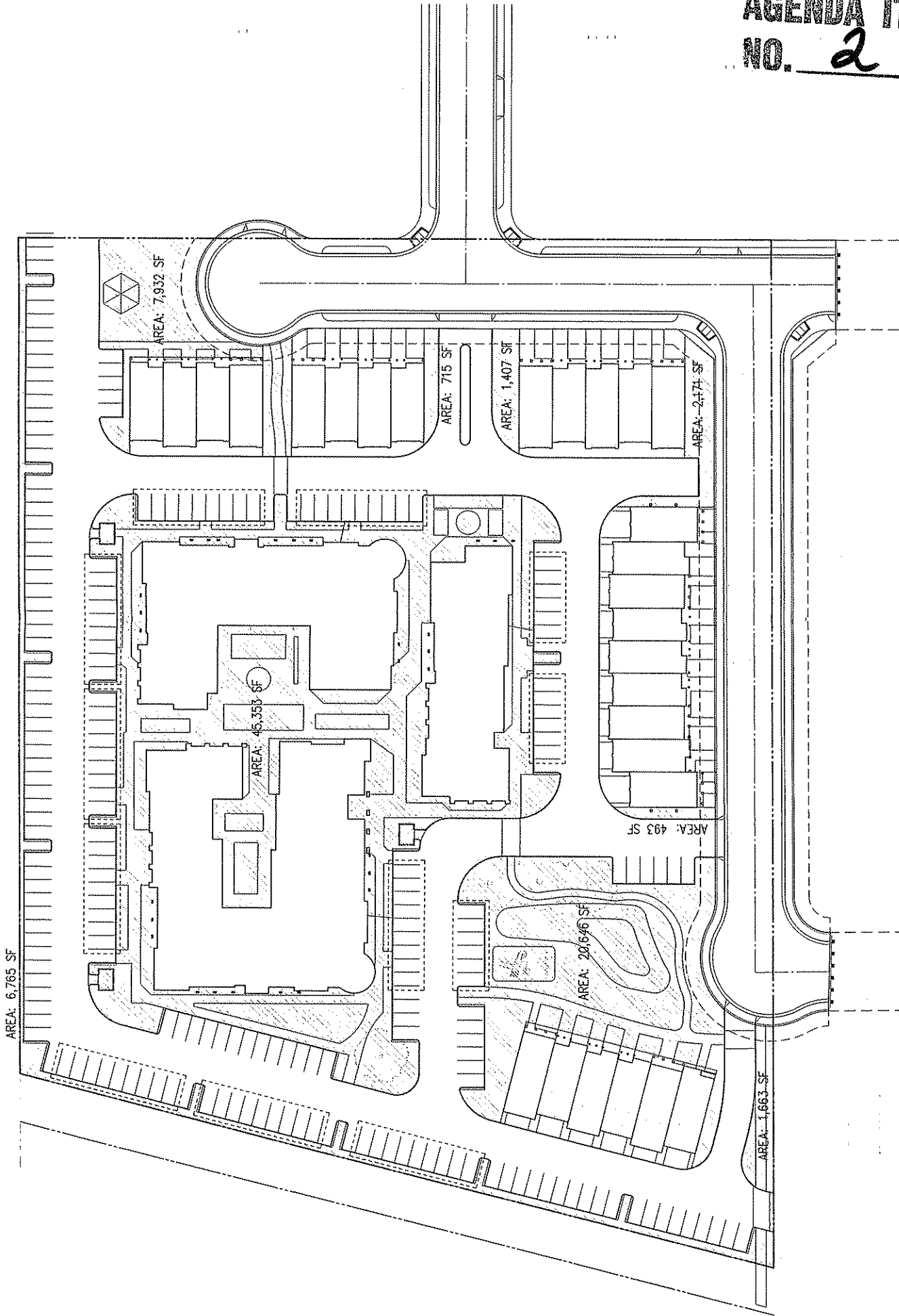
This criteria for short blocks is not very clear. We do not propose short blocks in the design. Since we "avoid short blocks", as we do not have any. Shouldn't we receive the point?

Request one additional point.

Sincerely,

Bill McClintock

AGENDA ITEM
NO. 2



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(408) 779-7381 / 226-3050
(408) 226-5712 Fax



MH engineering Co.

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(408) 637-1645
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AGENDA ITEM

NO. 3

MH27125

December 2, 2008

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

PLANNING DEPT.

DEC 03 2008

CITY OF MORGAN HILL

RE: Final Scores for MC-08-13 -Clayton- O'Brien

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Public Works- Page 22 Criteria 2.c.

Staff has withheld one point for "No New Storm Drains", when this criteria was reviewed by committee this year my understanding was that even if only existing storm drains are used and none are proposed, the applicant was entitled to this point, if the existing public storm drains are under paved streets.

Request one additional point.

Lot Layout and Orientation- Page 48 Criteria 4

One point was withheld because staff believes that only one home along Peebles Avenue is proposed to have sound board installed. The narrative clearly states that "Applicant will install sound boards on houses fronting Peebles Avenue." The site plan has two homes facing Peebles Avenue, a "production home" and a custom home. The custom home will have all the same commitments as stated on page 5 of 72 in the Project Questionnaire.

Request one additional point.

Circulation Efficiency – Page 49 Criteria 1.a.

This criteria awards a point for discouraging fast traffic. Applicant has proposed a cul-de-sac with a standard fire truck turnaround. A cul-de-sac design that is less than city maximum length is inherently the best deterrent of fast traffic. Staff doesn't accept this approach as a "traffic control device". We think it does.

Request one additional point.

Natural and Environmental –Page 65 Criteria 2.a.

Applicant has proposed larger than standard setbacks along the northerly project boundary, which has been accepted in previous Measure C competitions as a practice to protect existing agricultural land. Staff has commented that they acknowledge the setbacks are larger than the standard but these setbacks are still only consistent with other lots in the vicinity. Only 3 out of 7 lots have only slightly larger than standard setbacks and the other 4 Lots have extremely large setbacks. This is less than half of the lots so perhaps one out of two points could be awarded since the criteria is an “up to two points.”

Request one more point.

Thank you in advance for your time and effort to reconsider these criteria.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill McClintock", written in a cursive style.

Bill McClintock

AMBER HILLS INVESTORS LLC
385 WOODVIEW AVE., SUITE 100
MORGAN HILL, CA 95037-2891
(408) 779-5900 FAX (408) 779-3840
"roliver@dividendhomes.com"

December 4, 2008

Mr. James Rowe
Community Development
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037-4128

Re: MC-08-15: W. Edmundson-Amber Hill

Dear Jim:

We respectfully request and review and reconsideration of the following scoring items of our project:

1. Schools: Page 8, Section 2.b.: The project is within $\frac{3}{4}$ of a mile of the school.. This is not via a road, but by way of the pathway along Llagas Creek. I walked the distance, through the gate at the rear of the project (before it was illegally boarded up by the adjacent landowner) with a measured stride and the distance to the school parking lot came out at just under $\frac{3}{4}$ mile. Request + 1 point
2. Open Space: Page 12, Section 1.b.: Vince requested this point when we thought we had an agreement with PanCal on the adjoining property. We are still working on that possibility, and it is likely to happen if the PanCal project gets allocations. Consider = 1 point
3. Public Facilities: Page 23, Section 2.d.: Again, Vince wrote this section when we thought we had an agreement with PanCal. It broke down at the last moment, and we asked MH Engineering to refigure the storm drainage with placement of oversize lines or lined cavities to hold the storm water so as to accomplish the same result. Bill McClintock was able to do this, at extra cost to us. Our site plan does not show a retention pond, and we will be retaining the water in the oversized underground storm lines/cavities so as to comply with this Section. Plus 1 point
4. Quality of Construction: Page 41, Section 1: There must be some misunderstanding. We hired a Build-it Green Qualified Consultant, who prepared the check list in order to meet the Criteria and score the 131 points. To discount the scoring makes no sense and is not appropriate. Plus 2 points

5. Circulation: Page 50, Section 1.d.: We respectfully disagree with staff's conclusion that the lay-out does not provide for a looping pattern of circulation. The Project was specifically designed with the main street (Piazza Way) stubbed to the adjoining PanCal project so that Piazza Way could loop back to Edmundson. We have made that provision and should be awarded a point. The provision does not specify that the looping street must be constructed in the project only that it "be provided" so as to allow creation of the looping street. We have met the intent. Plus 1 point

6. Circulation: Page 50, Section 1.e: It is true that the some of the improvements have already been installed along Edmundson, and that fact was taken into account when we purchased the property (at a higher price than we would have paid had those improvements not been in place). We will complete the sidewalk, and should not be penalized for having paid for the cost of these improvements in the purchase price. Plus 1 point

7. Circulation: Page 50, Section 1.f.: We respectfully disagree with staff's scoring. Street "A" appears to be a "short block"; however, it fits into the exclusion set forth in the criteria, since it is an entry aisle which is less than the 250 feet from the entry off of Edmundson. This situation has always been excluded and not defeated the scoring of a point in this criteria in prior competitions. Plus 1 point

8. Safety: Page 56, Section 1.f.: We agreed to form a Neighborhood Watch Program. We can accomplish this with the 15 homeowners of the project, or can join in a similar Watch Program with the PanCal project if or when it proceeds. But we committed to do it regardless, and we should receive the score. Plus 0.5 point.

9. Landscaping: Page 62, Section 4: Please refer to the attached letter from Terrasearch, Inc., regarding the Percolation Assessment, which Vince submitted with our application. This should qualify the site for a score. Plus 2 points (but only one additional point available in this Criteria).

10. Landscaping: Page 62, Section 6: This section was omitted from the Staff's Scoring; however, it was included in the Application Documents provided and we committed to install the hardwired carbon monoxide detection devise and should receive the score: Plus 1 point

11. Environmental: Page 65, Section 2.b.: We respectfully disagree with staff's scoring. The criteria does not require the "elimination" the sound wall, only to "minimize" the wall. We created a larger buffer area and set back area for the homes along this area, thereby permitting the use of a six foot high sound wall rather than an eight foot high wall. Also, it is my recollection that full points have been awarded in past year's competition for similar commitments. Plus 2 points

12. Livable Communities: Page 69. Section 5. This is a question of interpretation. The Criteria does not state that this section only applies to downtown projects. It is possible that other projects within the City either do or do not build to the plan densities, and therefore would be scored accordingly. This project is designed to meet the “planned density” for the zone district it is in and should score. Plus 2 points

13. Livable Communities: Page 70, Section 6.2.: We committed to include the detailing on all four sides of the buildings. The plans included are schematic only, and in fact are plans that we have used in past projects (in order to save application costs), including the Mirasol and Coyote Estates Projects, and which received the 2 points in this criteria. The details for the architectural relief are developed during the Arch and Site Review Process, and based upon our commitment in our application, the appropriate architectural relief will be provided. Plus 1 point

Thank you for your consideration and review.

Very truly yours,

Amber Hills Investors, LLC

Dick

By: Richard B. Oliver
President

Enclosed: Terrasearch Letter

AGENDA ITEM
NO. 4



Environmental • Geotechnical • Special Inspections • Materials Testing

TERRASEARCH INC.

SERVING NORTHERN CALIFORNIA SINCE 1969

24 September 2008

SAN JOSE

322 Piercy Road
San Jose, CA 95138
Phone: (408) 362-4920
Fax: (408) 362-4926

Mr. Dick Oliver
Dividend Homes
385 Woodview Ave, Suite 100
Morgan Hill, CA 95037

LIVERMORE

257 Wright Brothers Ave.
Livermore, CA 94551
Phone: (925) 243-6662
Fax: (925) 243-6663

Subject: Proposed Residential Development
174 W. Edmundson Ave
Morgan Hill, California
PERCOLATION SITE ASSESSMENT

SACRAMENTO

4200 N. Freeway Blvd.
Suite 2
Sacramento, CA 95834
Phone: (916) 564-7809
Fax: (916) 564-7672

Dear Mr. Oliver:

At your request we made a recent site reconnaissance of the subject property, and reviewed the City of Morgan Hill percolation rate maps for the site vicinity.

Based on our review, it is noted that the site is within an area classified as having moderate percolation rates. However, it is our understanding that 68% of the site is dedicated as open space. Therefore, it is our opinion that the amount of open space will elevate site drainage ability.

Should you have any questions or should require additional information, please do not hesitate to contact our office at your convenience.

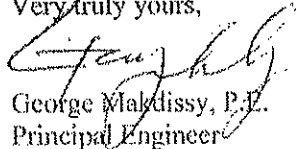
OAKLAND

7700 Edgewater Drive
Suite 847
Oakland, CA 94621
Phone: (510) 633-1332
Fax: (408) 362-4926

FRESNO

4339 N. Golden State Blvd.
Suite 103
Fresno, CA 93722
Phone: (559) 271-0773
Fax: (559) 271-0763

Very truly yours,


George Makdissy, P.E.
Principal Engineer

WEBSITE

www.terrasearchinc.com

E-MAIL

info@terrasearchinc.com

16075 Vineyard Blvd.
P.O. Box 1029
Morgan Hill, CA 95038
(408) 779-7381 / 226-3050
(408) 226-5712 Fax



MH engineering Co.

225 Sixth Street, Suite B
P.O. Box 1037
Hollister, CA 95023
(408) 637-1645
Fax (408) 637-3412

AGENDA ITEM
NO. 4

December 3, 2008

MH26140

PLANNING DEPT.

DEC 05 2008

CITY OF MORGAN HILL

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

RE: Final Scores for MC-08-15:W. Edmundson-Amber Hill
Investors LLC

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Schools- Page 8 Criteria 2.b.

This project is less than 0.5 miles walking distance when walking through the adjacent park to Little Llagas Creek pathway and continuing along this pathway to Paradise Valley School.

Request one additional point.

Circulation Efficiency- Page 50 Criteria 1.d.

The standards and criteria requires that the "interior streets and drive aisles are designed to meet all city safety and parking standards and allow for a looping pattern of circulation."

The criteria does not say "provide" a looping pattern. The proposed design does allow for looping street pattern and all city standards are met.

Request one additional point.

Sincerely,

Bill McClintock

DEC 05 2008

CITY OF MORGAN HILL

**AGENDA ITEM
NO. 5**

December 3, 2008

Attn: James Rowe
Planning Department
17555 Peak Avenue
City of Morgan Hill, CA 95037

RE: West Dunne MC-08-24

Dear Jim:

Thank you for sending the Measure C scoring. I appreciate staff time in putting together the competition for the Measure C process this year. I have reviewed the scoring for our West Dunne Avenue and have a few items that need clarification and correction. They are as follows:

1. Orderly and Contiguous Development – Criteria 3 – Adjacency – The Criteria gives credit for adjacent development for projects “which by September 15th of the fiscal year the competition is held has received either final map approval or tentative map and development agreement approval “ shall be considered eto be developed property. We requested consideration of the south side of this project as developed. The south side is an approved Parcel Map with signed and approved conditions of approval. All improvement plans and Final Parcel Maps for recordation of been submitted to Public Works for approval and recordation. Points should be increased for adjacent development on the south side. We also did not receive credit for the existing Howard home on the west side of the project. Please consider these two areas. The project merits an additional 2 points under this criteria for adjacent development.
2. Parks and Paths – Criteria B.1. – We are a small project and have not included an “on-site” park area. The criteria specifically addressès this situation and we proposed to meet the criteria. It appears that this item may have been missed, since there is no Staff Comment for the 0 points awarded. We proposed to meet the criteria exactly and requested 4 points. However, 0 points were awarded. We request 4 points under this criteria.
3. Livable Communities – Criteria 3. – The project is within ½ mile of an existing stop and will be directly at a planned new route that this project will be installing a bus stop to serve. We would request 2 points for being directly at the location of

December 3, 2008

the new Route 15 and ½ mile from an existing stop. These are identified in the VTA letter with the application. We would request 2 points under this criteria.

Please don't hesitate to call me if you have any questions on these items. Thank you for your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Schilling', with a stylized, overlapping design.

Scott Schilling
South Valley Developers
16060 Caputo Drive #160
Morgan Hill, CA 95037
408-779-6400

16075 Vineyard Blvd.
P.O. Box 1029
Morgan Hill, CA 95038
(408) 779-7381 / 226-3050
(408) 226-5712 Fax



MH engineering Co.

225 Sixth Street, Suite B
Hollister, CA 95023
(831) 637-1645
Fax (831) 637-3412

AGENDA ITEM
NO. 6

December 5, 2008

MH26242.1

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

PLANNING DEPT.

DEC 05 2008

CITY OF MORGAN HILL

RE: Final Scores for MC-08-16: Peet-Borello

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Public Facilities- Page 23 Criteria 2.e.

This project is near the cities existing well field north of Cochrane Road, so the applicant has offered a well site to augment the city supply.

This was offered in the applicant's prescreening application and was awarded the point so why would it not be awarded now?

Request one additional point.

Sincerely,

Bill McClintock

16075 Vineyard Blvd.
P.O. Box 1029
Morgan Hill, CA 95038
(408) 779-7381 / 226-3050
(408) 226-5712 Fax



MH engineering Co.

225 Sixth Street, Suite B
P.O. Box 1037
Hollister, CA 95023
(408) 637-1645
Fax (408) 637-3412

AGENDA ITEM

NO. 7

PLANNING DEPT

DEC 05 2008

CITY OF MORGAN HILL

December 3, 2008

MH26213

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

RE: Final Scores for MC-08-17: E. CENTRAL-SHENG

Dear Jim,

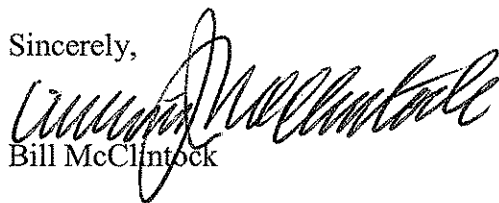
Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Orderly and Contiguous- Page 16 Criteria 1

I have enclosed a map of the project in relation to the Central Core boundary and measure 563 feet from the southerly boundary to the angle in the central core boundary.

Request one half additional point.

Sincerely,



Bill McClintock

AGENDA ITEM
NO. 7

1" = 150'

N

WAZATAN

"CERRO
VERDE"

CALLE VERDE

CALLE CERRO

563'

BUTTERFIELD

CHANEL

CENTRAL
CORE

BUTTERFIELD

BOULE VARD

600'

CENTRAL CORE

AVENUE

MSJ Green Building Consulting**AGENDA ITEM
NO. 8**

546 Hilbar Lane, Palo Alto, CA 94303
Tel: 650.799.7100 Fax: 650.989.1263

December 5, 2008

To: Jim Rowe, Rebecca Fotu
City of Morgan Hill

Cc: Monterey Dynasty, LLC

Re: MC-08-19 Butterfield – Monterey Dynasty

Dear Jim,

This letter is in response to the Build It Green checklist comments that we received from the City of Morgan Hill planning commission for the above project. I am surprised and disappointed that we did not get the full 15 points on Quality of Construction. The city is request for two sets (one 131 points checklist and the other with 20% buffer points) of checklist for a project is unusual and very confusing to me as a GreenPoint Rater. Usually, I only produce and submit a single checklist for a given project. This checklist should already include any buffer points (usually 15%-20%) that I always advise my clients to include. During different phases in construction, client can drop or implement any measure that they have checked in the BIG's checklist or even add a new measure. As long as they achieve the minimum points required in each specific category, they will be awarded a GreenPoint Rated certificate from Build It Green. In our case, we submitted a Single Family Checklist of 158 points for this project and I think we should be awarded the full 15 points on Quality of Construction.

From your comments, you mentioned the buffer points did not reflect measures that can be taken in the event that the project did not meet the 131 point requirement at final building inspection. As a rater, it is my duty to work closely with my client to ensure they reach their target points at the final inspection. We start work with our client from day 1 till the end of the construction. We will constantly communicate with our client during the entire construction process. Also, we will make a number of site verification visits to ensure progress is made and there are no surprises. It is our practice to ask our client to provide us with all documentations that are required to achieve a particular measure during each phase of the construction. This will enable us to monitor our client's progress, to advise them when problem arises and to recommend action items so that they can reach their target points at the final inspection.

We have selected measure (B)1a to divert 80% of construction waste as a buffer point measure. Since we have already committed to divert 65% of construction waste, to divert an addition 15% is entirely possible as long as we opt for this measure in the early phase of the construction.

From our 131 points checklist we submitted, we did not checked any renewable energy measures and we only checked the pre-plumb for solar hot water & pre-wire for PV in the 158 points buffer checklist. So, if all goes well in the 131 points checklist that our client has committed to do, we will not be using these renewable energy measures.

As for the low VOCs measures, Build It Green does not mandate these measures. The only requirement in the IAQ/Health category is to achieve a minimum of 5 points. If these measures are City of Morgan Hill mandatory requirement, then we will make sure that they are implemented.

I hope I have answered your concerns. Please do not hesitate to contact me if you have any other questions with regard to this project or BIG questions.

Yours sincerely,

Michael Chau B. Eng., CGBP, GPR
Consultant



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(408) 226-5712 Fax



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December 5, 2008

AGENDA ITEM
NO. 8

MH25264

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

PLANNING DEPT

DEC 05 2008

CITY OF MORGAN HILL

RE: Final Scores for MC-08-19: Butterfield- Monterey Dynasty

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Natural and Environmental- Page 63 Criteria 1.a.

On sheet 4 of 4, the Preliminary Grading Plan, Section A-A is plotted through the lots and proposed detention pond. The detention pond is on the left side of the section and clearly shows the depth to be less than 3 feet.

Request one additional point.

Sincerely,

Bill McClintock

Attachments: 11x17 sheet 4 of 4

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AGENDA ITEM
NO. 9

December 3, 2008

MH27069

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

PLANNING DEPT

DEC 05 2008

CITY OF MORGAN HILL

RE: Final Scores for MC-08-20: W. Edmundson- PanCal

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Schools- Page 8 Criteria 2.c.

Walking distance to Paradise Valley School is only 0.50 miles when you walk from the project along Edmundson Ave, Piazza Way, through the existing park at the end of Piazza Way, along the Llagas Creek paved pathway to Paradise Valley School.

Request one additional point.

Open Space Page 12 Criteria 1.a.

Site Plan shows that the landscape buffer measures 31' or 36' from face of curb along Edmundson Ave, not 15' as stated by staff.

Request one additional point.

Circulation Efficiency Page 49 Criteria 1.b.

Staff says "the Amber Hills LLC parcel does not need a stub to develop since it has street frontage along Piazza Way".

We agree that the frontage exists, however, Piazza Way as proposed for Amber Hills measures 644 feet long and exceeds city standard for a cul-de-sac. Stub is needed.

Circulation Efficiency Page 50 Criteria 1.f.

Staff consistently calls “entry aisle” with “curb-cuts”, a short block and the criteria clearly accepts this design element as proposed is not a short block.

Request one additional point.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill McClintock", written in a cursive style.

Bill McClintock

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AGENDA ITEM
NO. 10

December 2, 2008

MH27068

Mr. James Rowe
Planning Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

PLANNING DEPT.

DEC 03 2008

CITY OF MORGAN HILL

RE: Final Scores for MC-08-22
Murphy-PanCal

Dear Jim,

Thank you and your staff for your thorough and unbiased review of this year's Measure C applications. As always, I would like to request a reconsideration on a few of the criteria prior to the Planning Commission meeting scheduled for December 9, 2008.

Circulation Efficiency – Page 50 Criteria 1.f.

A short block is defined as having less than 250 feet from centerline to centerline of streets. While we agree with staff that these distances are less than 250 feet, the criteria does not apply to "an entry aisle" less than 250 feet or is "not applicable" where a drive aisle and curb cuts are used to access the entire project site.

The applicant considers these entrances to the project as drive aisles and curb cuts are provided in every case. No driveways from the fronting lots are located along these drive aisles. The garages are rear loading from a remote private driveway, so that the negative aspects of short blocks is not an issue.

Request one additional point.

Thank you in advance for your time and effort to reconsider these criteria.

Sincerely,

Bill McClintock

SOUTH VALLEY DEVELOPERS

PLANNING DEPT.

DEC 05 2008

CITY OF MORGAN HILL

**AGENDA ITEM
NO. 11**

December 5, 2008

Attn: James Rowe
Planning Department
17555 Peak Avenue
City of Morgan Hill, CA 95037

RE: East Dunne MC-08-23

Dear Jim:

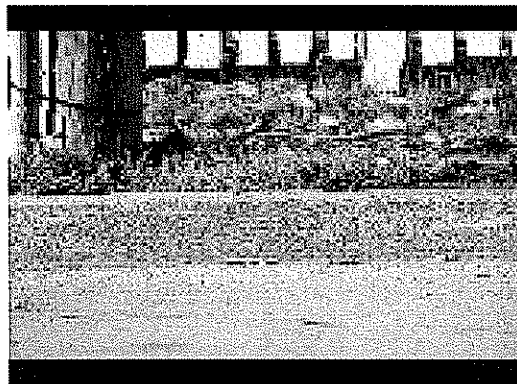
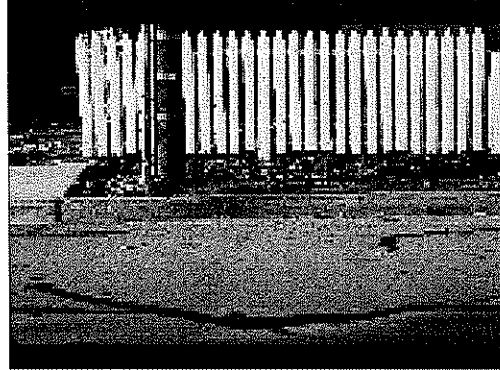
Thank you for sending the Measure C scoring. I appreciate staff time in putting together the competition for the Measure C process this year. I have reviewed the scoring for the East Dunne Avenue project and have a few items that need clarification and correction. They are as follows:

1. Circulation Efficiency – Criteria 1.b. – Provides for the future extension of streets or drive aisles for proper access or circulation to adjacent properties by providing one or more stubs or other improvements internal to the project.”

We spent a significant amount of design time and discussion with the adjacent property and with the City of Morgan Hill to provide improvements and a drive aisle for proper access and circulation to serve both properties,(ours and the industrial property to the south), and eliminate the current title issue with Myrtle Avenue. I strongly believe that these improvements that will serve and benefit both properties, and the proposed drive aisle meets the intent of this criteria. We would request reconsideration for 2 points under this criteria.

2. Circulation Efficiency – Criteria 1.e. – “Eliminates existing stub or substandard streets.”

We are proposing improvements to Church Street full width including curb, gutter, and sidewalk on both sides. The current improvements are substandard – included old and cracked curb and gutter on both sides, old and broken paving throughout the street, and no sidewalk on either side of the street. Please see the attached photos. We would request 2 additional points under this criteria.



3. Landscaping, Screening, and Color – Criteria 5. – Although the project is not included with the designated downtown area – it is contiguous with the downtown area on two sides and is viewable from the downtown area and plays a key role in terms of visibility and a gateway into the downtown area. It is important for this site to use color and architectural details to add visual interest. The project is entirely visible looking south along the recently upgraded railroad avenue and will play a key role in the style and appeal entering the downtown. We have incorporated these elements into the design and the project merits the point under this criteria.
4. Livable Communities – Criteria 6.d. – “Provides a consistent level of architectural relief.” The score was reduced ½ point because an elevation was not shown including unit #2 – an end Unit. However, a typical elevation is shown with Unit #3 and #4 as end units. The elevations are conceptual and are representative, Per Measure C submittal requirements, of the unit style and detailing. The written text of the narrative and the commitment is made to achieve full score in the narrative under this item, and the conceptual detailing of the building merits the points under this criteria. Regardless of which unit is shown on the end. We request an additional ½ point under this criteria.
5. Livable Communities – Criteria 7. – overall for a multi family project this project provides excellent privacy for individuals by alternating buildings, using a variety of open space mixed throughout the project, and varied floorplans and buildings

December 5, 2008

throughout the project. The two buildings that face each other provide a safe and private setting for the front doors. Each unit contains its own exterior front door, and front doors are visible from the neighbors to promote neighborhood safety and a sense of community. We request 1 point under this criteria.

We appreciate your consideration of these items. Please don't hesitate to call me if you have any questions on these items. Thank you for your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Schilling', with a stylized, overlapping design.

Scott Schilling
South Valley Developers
16060 Caputo Drive #160
Morgan Hill, CA 95037
408-779-6400



AGENDA ITEM
NO. 12

MEMORANDUM

To: PLANNING COMMISSION

Date: December 9, 2008

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: SELECTION OF VICE-CHAIR

REQUEST

With the resignation of the Vice Chair, Commissioner Davenport, the Planning Commission will need to select a new Vic Chair to serve for the remainder of the term ending June 1, 2009. City Council policy provides that the member serving the longest on the Commission without having previously served as Chair will serve as the Chairperson. The member second in seniority will serve as Vice-Chair. The policy further states that if the member serving as Vice-Chair is on the Commission at the time the next Chair is selected, he or she will become Chair the following year. Based on the City Council policy, Commissioner Tanda is next in line to serve as Vice-Chair for the remainder of the term. Commissioners Acevedo and Mueller, not having served as Chairperson during the previous four (4) years, would also be eligible to serve again as the Vice-Chair.

RECOMMENDATION

Select member to serve as Vice Chair for the remainder of the term ending June 1, 2009.

Attachment:

City Council Chair/Vice Chair Selection Policy

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 96-02

SUBJECT: POLICY REGARDING TERM AND SELECTION OF CHAIR AND VICE CHAIR OF CITY BOARDS AND COMMISSIONS

DATE: APRIL 17, 1996

REVISION DATE: DECEMBER 15, 1999, REVIEWED JUNE 27, 2007

ORIGINATING DEPT: CITY CLERK

In order to provide an efficient method for the selection of Chair and Vice-Chair from the members of the Boards and Commissions, it shall be the policy of the City Council of Morgan Hill to have these officers serve a one (1) year term beginning the first regular meeting date of each fiscal year. A rotation system shall be followed in the selection of the Chair and Vice-Chair. The member who has served the longest on the Board or Commission without serving as Chair during the previous four (4) years shall be selected for the position of Chair. The member second in seniority who has not yet served during the previous four (4) years as Chair shall become Vice-Chair. If the member selected as Vice-Chair is on the Board or Commission at the time the next Chair is selected he/she shall become Chair.

Prior to selection as Chair, a Board or Commission member must serve a minimum of twelve (12) months on the Board or Commission. Each member's seniority shall begin upon the effective date of that member's appointment to the Board or Commission. If two (2) or more members have equal seniority, the Board or Commission shall make the selection. In the event a member otherwise eligible for selection declines the position, the member next in seniority shall be selected. A Board or Commission member will be eligible to serve another term as Chair and Vice Chair provided at least four (4) years have transpired since having previously served as Chair or Vice Chair respectively. Such period may be reduced by one year increments if no other Board or Commission member is eligible to serve due to a recent appointment or because a member otherwise eligible for selection declines the position. If two or more members are eligible to serve another term as Chair, the member who has served the longest on the Board or Commission since having previously served as Chair shall be first in seniority to serve another term as Chair and Vice Chair.

This policy shall remain in effect until modified by the City Council.

APPROVED: _____